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LAW, STATE AND THE AGRARIAN QUESTION IN ZIMBABWE.

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DECLARATION

No portion of this thesis has been submitted in support of an application for another degree or qualification from this University or any other Institution of Higher Learning.

ABSTRACT

The agrarian question is one of Zimbabwe's enduring colonial legacies. At independence the ensemble of issues comprising the agrarian question included an inequitable racial distribution of land, different tenure systems for blacks and white settlers, a discriminatory provision of agricultural support services, and repressive relations between the state and the peasantry. Peasant grievances over the agrarian question mobilised their support for the liberation struggle which culminated in independence in 1980. Contrary to the expectations of the majority of Zimbabweans, agrarian reforms introduced since independence have not transformed the colonial agrarian structure.

The thesis investigates factors which account for the nature of agrarian reforms. Using a socio-historical analysis, it examines changes and continuities in agrarian policies and laws. In the main, the thesis argues that reform has been shaped by changes in power relations in society which are reflected in the exercise of state power. It shows that the manner in which independence was achieved and the character and ideologies of the social forces that inherited state power account for the changes and continuities in policies and laws. The thesis demonstrates that land reform was initially constrained by the constitutional provision which protected private property from compulsory acquisition. More important, it argues that reform has been determined by the failure to transform the inherited accumulation strategy, of which capitalist agriculture is an integral element. In addition, it demonstrates that the manner in which land has been redistributed reflects the continuation of colonial ideologies of modernisation. Furthermore, the thesis shows that communal tenure as constructed by the colonial state has been retained partly because of the ideology of neo-traditionalism and partly because it allows the state to intervene in peasant land use and production processes as part of the process of modernisation. It also shows that the modernisation of peasant agriculture has been attempted through the extension of input, credit, price and marketing packages.

Consequently, the thesis shows that the agrarian question is as relevant today as it was at independence, and that the limited and contradictory nature of the agrarian reforms reflects the limitations and contradictions inherent in the post-colonial democratisation process. Hence agrarian reform can only be adequately addressed as part of a comprehensive transformation of the accumulation process and societal democratisation.

ABBREVIATIONS

AFC	Agricultural Finance Corporation.
Agritex	Agricultural Extension and Technical Service.
AMA	Agricultural Marketing Authority.
CFU	Commercial Farmers' Union.
CMB	Cotton Marketing Board.
DERUDE	Department of Rural Development.
FFYNDP	First Five-Year National Development Plan.
GMB	Grain Marketing Board.
HC-B	High Court Bulawayo
HC-H	High Court Harare.
IMF	International Monetary Fund.
LSCF	Large Scale Commercial Farming.
NFAZ	National Farmers' Association of Zimbabwe.
NGO	Non-Governmental Organisation.
NLP	National Land Policy.
PF	Patriotic Front.
SAP	Structural Adjustment Programme.

SC	Supreme Court.
TNDP	Transitional National Development Plan.
UANC	United African National Congress.
UDI	Unilateral Declaration of Independence.
VIDCO	Village Development Committee.
WADCO	Ward Development Committee.
ZANLA	Zimbabwe National Liberation Army.
ZANU	Zimbabwe African National Union.
ZAPU	Zimbabwe People's Union.
ZFU	Zimbabwe Farmers' Union.
ZIMCORD	Zimbabwe Conference on Reconstruction and Development.
ZIPRA	Zimbabwe People's Revolutionary Army.
ZNFU	Zimbabwe National Farmer's Union.
ZUM	Zimbabwe Unity Movement.

INTRODUCTION.

In 1980 Zimbabwe gained her independence after about ninety years of settler colonialism. During the colonial period, Africans waged various forms of struggle for self-determination against settler domination and exploitation. These struggles brought together a variety of social groups which, despite group-specific grievances, were united in their opposition to racial domination and exploitation. In the mid-1960s, these struggles culminated in a war of liberation which was a response to growing repression and settler intransigence following the unilateral declaration of independence from Britain in 1965.¹ In response to the intensification of the war in the 1970s, the British and American governments intervened in an attempt to find a negotiated settlement which would preclude a radical transformation as was the case in Mozambique and Angola. Their efforts led to the Lancaster House Agreement of 1979 which included a constitutional framework for the transfer of power from the settlers to a section of the social forces that waged the liberation struggle.

In the first elections held in 1980 the Patriotic Front (PF) allies that had waged the war of liberation, ZANU and ZAPU, won by a clear majority. During the liberation struggle, both wings of the PF espoused radical programmes for the transformation and democratisation of colonial social relations. Despite the constraints imposed by the Lancaster House Constitution, their victory in the 1980 elections was generally seen as providing a basis for the introduction of socio-economic programmes which would transform colonial social relations. The agrarian question, that is the cluster of issues concerning land and the peasantry, was one area where radical transformation was promised and eagerly awaited. To most Zimbabweans, the agrarian question encapsulated some of the worst evils of colonial domination and exploitation.

For the Zimbabwean peasantry, colonialism was associated, first and foremost, with the settler expropriation of land and the expulsion of Africans to marginal land, insecurity of tenure and arbitrary intervention by colonial officials in peasant land use and settlement

patterns, and discriminatory access to credit, inputs and markets. The above cluster of issues mobilised peasant support for and participation in the guerrilla war of liberation. Thus

¹ The unilateral declaration of independence (UDI) and the intensification of repression which accompanied it are discussed in Chapter 2.

when independence was finally achieved in 1980, the agrarian question stood high on the agenda of pressing issues that needed immediate redress.

Since independence, there have been several attempts at agrarian reform. Yet the reforms have not transformed the agrarian structure. The agrarian structure comprises a system of social relations in agriculture and the corresponding system of land tenure (de Janvry 1984:265). Agrarian reform refers to public policies which may or may not lead to a social transition within the agricultural community.² Reforms which lead to a social transition within the agricultural community effectively transform the agrarian structure, while reforms which do not lead to a social transition take place within the existing agrarian structure and therefore leave the dominant social interests intact.

As statistics indicate, agrarian reform in Zimbabwe has been a case of unrealised targets and unfulfilled promises. At independence, 6 700 settler farmers owned 15,5 million hectares of land or 47% of agricultural land, while about 700 000 peasant households held 16,4 million hectares or 49%, and 8 500 African small scale capitalist farmers controlled about 1,4 million hectares or 4% of agricultural land. By 1993 about 4 000 large scale capitalist farmers controlled 11,2 million hectares, about 1 million peasant households held 16,3 million hectares, about 10 000 small scale capitalist farmers controlled 1,2 million hectares, and 52 000 resettled families controlled 3,3 million hectares. The government proposed to resettle 162 000 families on 9 million hectares during the first decade of independence (Zimbabwe 1993, Land Commission 1994a).

It is estimated that in 1980 a peasant farmer had access to about 20 hectares of land for both cultivation and grazing stock. As a result of population growth and despite resettlement, it is estimated that the amount of land had decreased to 17,5 hectares per farmer by 1989. In the large scale capitalist sector, the average farm size varies from 1 728 hectares in areas with good rainfall to 12 800 hectares in the drier regions (Zimbabwe 1989). More than 70% of land occupied by the peasantry is in the poorer and drier agro-ecological regions while most large scale capitalist farms are in the better agro-ecological regions. Since 1980 credit, marketing,

² See Sobhan (1993) for a discussion of different types of reforms.

and input services have been extended to the peasantry. While peasants gain access to land on the basis of communal tenure, capitalist farmers hold land on the basis of freehold tenure.

The reforms introduced since 1980 have not, therefore, transformed the agrarian structure. In the circumstances, today there is as much need, if not more, for agrarian reform as there was in 1980. This thesis investigates the socio-legal aspects of the agrarian question with particular reference to the period since independence. It seeks to answer two questions: (a) How and in what respects has the agrarian structure changed since independence? and, (b) What accounts for the nature of the changes? In order to answer the questions the thesis analyses agrarian policies and laws. It combines an analysis of the technical aspects of the policies and laws with a historical analysis of their changes and continuities. The manner in which this is done is discussed below in the methodology section.

Methodological Issues.

Harvey (1990:1) defines methodology as the 'interface between methodic practice, substantive theory and epistemological underpinnings'. It is

the point at which method, theory and epistemology coalesce in an overt way in the process of directly investigating specific instances within the social world (Harvey 1990:1).

The epistemological objective of this research is to develop knowledge which contributes to an explanation and understanding of the contradictory developments in post-colonial Zimbabwe. The underlying premise of the thesis is that such knowledge is best developed through a critique; that is, 'the critical investigation of both ideas *and* social realities they claim to represent and explain' (Colletti 1972 quoted in Bernstein and Campbell 1985). The epistemological objective underpins and informs the theoretical and methodic aspects of the research.

The thesis employs a historical materialist theoretical framework and proceeds from the premise that analytical categories are historically specific and, therefore, delimited.³ In other words, categories which are employed in the thesis such as law, the state, the agrarian

³ Sayer (1987) provides a brilliant analysis of historical materialism.

question and ideology are firmly anchored in social history. For as Sayer correctly observes, there is a need to be aware of 'the historical boundaries to the legitimate employment of concepts, and theories built upon them' (1987:140). Similarly, Serequeberhan (1994:34) observes that

theory (any theory) always carries, sustains, valorises, and constantly resuscitates within itself the traces of the originative ground out of which it was initially theorized.

Concepts are therefore not universal, ideal-typical or transhistorical abstractions unbounded by time and space. Rather, concepts are rooted in particular societies and to universalise them would be tantamount to essentialising the historicity of those societies. Thus Chapter 1 develops historically specific analytical categories for the rest of the thesis. The chapter is sensitive to the historicity of categories such as the state, law, ideology, and the agrarian question. It thus attempts to situate the categories in the historically specific circumstances of Zimbabwe.

In addition to the foregoing discussion, historical materialism, as understood in this thesis, concerns the study of the history of society and the interrelatedness of different aspects of social relations such as the state, law, ideology, and the economy. Law, the state, the economy and ideology have no independent history outside social relations. Historical materialism seeks to show the relationship between the different aspects of social relations and the manner in which they determine each other. For example, the thesis analyses the relationship between law and the state as aspects of agrarian social relations, how they determine each other, and how they are determined by the economy and ideology. Hence the base/superstructure metaphor, which views law, state and ideology as superstructures that arise out of and are determined by the economy is, in the context of this thesis, an inadequate analytical framework.⁴

History as understood in the thesis is not a teleological and self-fulfilling process with a terminus somewhere in the future. It is not an omnibus which picks up societies at different stages of development as it travels in a predetermined route towards modernity. History is

⁴ For a critique of the base/superstructure metaphor, see Sayer (1987).

made by men and women as they relate with each other in the process of material production and the reproduction of life in historically and geographically specific settings. As Marx (1968:97) observed:

Men make their own history, but they do not make it just as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given and transmitted from the past.

This thesis is concerned with the manner in which men and women and social classes relate to each other in the process of material production and the reproduction of life within Zimbabwe's agrarian structure. It is also concerned with how and why they have shaped the agrarian structure in particular ways.

Most of the data for the thesis was collected during a period of six months spent in Zimbabwe between September 1993 and March 1994. A combination of methods were employed; the main one being primary and secondary documentary analysis. The primary documents analysed include primary and secondary legislation, government policy documents, documents produced by interest groups, court cases, and parliamentary debates. The secondary documentary analysis covered social science literature on the agrarian question in Zimbabwe. In addition, articles from newspapers and magazines were analysed. Interviews with selected informants were also carried out.

A Commission of Inquiry into Land Tenure Systems was appointed in November 1993 during the time of the data collection exercise. The work of the Commission generated a lot of literature which has been consulted. A number of interest groups organised workshops and seminars for purposes of preparing submissions to the Commission. Participation in these workshops and seminars formed part of the data collection process.⁵ The Commission submitted its report at the end of October 1994. At the time of submission, the Commission's Report is yet to be made public. This is unfortunate because it is an important document which would have enriched the thesis.

⁵ I participated in a workshop on Women and the Land which was organised by the Zimbabwe Women's Resource Centre and Network and a seminar organised by the Indigenous Commercial Farmers Association. Both were held in Harare on the 20th of January 1994.

Primary and secondary sources were used in the analysis and discussion of the period since 1980 while secondary sources were used for the colonial period. There is a surfeit of excellent literature based on archival research upon which the thesis has drawn in the analysis of the agrarian question during the colonial period.⁶

Locating government policy documents in Zimbabwe involves traversing ministry and departmental offices, libraries, the Government Printers, and the national archives. There is no one-stop facility where one can obtain all government policy documents. In the circumstances, documents were obtained from the main library at the University of Zimbabwe, the Faculty of Law library, the library of the Institute of Development Studies, the Government Printers, the library of the Parliament of Zimbabwe, and from government departments. I was also able to obtain some of the documents from individuals who are interested in the subject. Except for one department, government officials and representatives of farmers' organisers responded positively to my request for interviews.

The thesis is a socio-historical critique of Zimbabwe's agrarian reforms. It is a critical investigation of agrarian policies and laws and the social reality they purport to represent. Through a process of historical analysis and critique, it interprets the policies and laws and their constitutive social relations and ideologies. It seeks to uncover social relations of domination and the ideologies that legitimate them.

The Structure of the Thesis.

Chapter 1 develops a theoretical framework for the thesis. Chapter 2 gives an historical overview of the colonial origins of the agrarian question. While the main focus of the research is the period from 1980 to 1995, it is essential to appreciate the historical origins of the agrarian question. The chapter covers the period from 1890 to 1979. It locates the origins of the agrarian question within colonial relations of production and accumulation strategies and the social contradictions they engendered. It is based on existing literature on the social and

⁶ See Ranger (1985) and Phimister (1988a).

economic history of colonial Zimbabwe, and draws heavily from the brilliant work of Phimister (1988a).

The approach adopted in the arrangement of the other chapters is mainly thematic. There is, however, a chronological aspect which needs to be highlighted. Zimbabwe's independence Constitution contained an entrenched Declaration of Rights which could not be amended or repealed within the first ten years except by a unanimous vote by the legislature. A clause in the Declaration of Rights prohibited the compulsory acquisition of private property except under restrictive conditions. Thus during the first decade of independence, there were constitutional constraints which impinged on the agrarian question. The Constitution was duly amended in 1990 in order to give the state a freer hand in undertaking agrarian reform. Chapters 3, 4 and 5 deal with specific themes during the first decade of independence while Chapter 8 pulls together those themes from 1990 to the present.

Chapter 3 analyses the decolonisation process and the struggles surrounding the making of the independence Constitution. It examines British and American attempts to negotiate a settlement that would prevent a structural transformation of the colonial social relations and shows that the Lancaster House agreement was the culmination of these efforts. Specifically, it examines struggles over the clause relating to the protection of private property from compulsory acquisition.

Chapter 4 examines the political economy within which agrarian reform took place during the first decade of independence. More specifically, it examines the land acquisition policies and laws. It argues that the contractual method which was enshrined in the Constitution became the only method which was used for land acquisition. Chapter 5 analyses the process of redistributing the land that was acquired by the state during the first decade of independence. It examines the tenure system and argues that the state has retained ownership of the land for purposes of regulating peasant production processes.

Chapter 6 examines customary tenure since independence. It shows that while the post-colonial state took away the authority to allocate land from chiefs and vested it in elected district councils, it retained the colonial customary tenure. It argues that colonial practices of

using customary tenure for purposes of controlling peasant production processes and settlement patterns have been retained by the post-colonial state.

Chapter 7 examines policies and laws regarding attempts to improve peasant productivity through the extension of marketing, credit and input services. It argues that colonial institutions which were established to promote capitalist accumulation in agriculture have been utilised by the state in an attempt to promote peasant productivity and accumulation. It also examines the contradictions arising out of attempts to promote peasant productivity and accumulation without a restructuring of property relations.

Chapter 8 analyses agrarian reform after the adoption of the structural adjustment programme (SAP) and after the 1990 amendment of the constitutional provisions which protected private property from compulsory acquisition. It argues that the adoption of SAP has given legitimacy to black accumulation. In addition, it argues that the enhanced powers of the state as regards land acquisition and redistribution are being used for the benefit of the black petty bourgeoisie and that poor peasantry are no longer the target group for land reform. The conclusion pulls together and summarises the arguments of the thesis.

CHAPTER 1

THEORETICAL FRAMEWORK

Introduction

The aim of this chapter is to develop an analytical framework for the thesis. The chapter begins with a discussion of the nature of the Zimbabwean state. It shows that agrarian reform cannot be adequately understood without an appreciation of the nature and role of the state. With respect to the state, the chapter argues that an analysis of its nature and role should be both historical and sociological. It also argues that the nature and role of the state is best understood through an analysis of the character and ideologies of the social forces that control it on one hand, and the national and international context within which its coercive and organisational power is exercised in the regulation and reproduction of social relations on the other.

In addition, the chapter analyses the ideology of nationalism which informed anti-colonial struggles and structured the exercise of post-colonial state power. It demonstrates that nationalist ideology was shaped by colonial material circumstances. It argues that nationalism developed as an oppositional ideology to colonial ideologies which justified colonialism and European domination. Furthermore, it argues that nationalism mobilised the support of the colonised because it offered to transform colonial social relations. The chapter shows that nationalism as a counter ideology was constructed out of Eurocentric ideas about the colonised which were turned upside down, and that the programmes of social transformation that it advocated were based on modernist conceptions. It argues that this had implications for the nature of post-colonial agrarian reforms.

In addition, the chapter also provides an analysis of law and its implications for agrarian reform. It argues that law as a regulatory framework mediates relations between the state and society. It also shows that positivist and functionalist theories do not provide an adequate framework for analysing law, and that law reproduces and expresses socio-economic power relations. Furthermore, the chapter analyses the nature of the agrarian question in Zimbabwe. It demonstrates that the agrarian question is historically specific. It argues that the agrarian question in Zimbabwe is a combination of the land and peasant questions.

1.1 The State and Agrarian Reform.

The nature of agrarian reform is always shaped by the character of the state and its capacity to regulate and reorganise society. It is therefore necessary to analyse the character of the Zimbabwean state and the social forces, both national and international, which have impinged on its capacity to engage in agrarian reform. From the outset, it should be pointed out that this thesis finds both modernisation and dependency theories inadequate in explaining the nature of the post-colonial state.¹ Modernisation theory conceives of the state as an autonomous and neutral entity that stands outside and above society and which is capable of initiating and pursuing development programmes for the benefit of the whole society (Alavi 1982:289). As presented in modernisation theory, the post-colonial state is activist, responds positively to the crusading calls of disinterested philanthropists, and implements transformative programmes for the benefit of society as a whole. Apart from the fact that the post-colonial state has been anything but autonomous and neutral, suffice to say that the theory is not based on historical and sociological analysis.

For underdevelopment theory, the post-colonial state is a dependent state which is under the control of an international bourgeois class. As such, it merely organises production for external profit (Kasfir 1983:1). While the emphasis on the continued external links goes a long way to correct some of the shortcomings of modernisation theory, dependency theory subordinates local social forces to the wishes of an international class and does not give them adequate social significance and explanatory weight.

As understood in this thesis, the state is an ensemble of historically specific power relations whose role is to regulate and organise the maintenance and reproduction of social relations within a definite political economy. The fact that the state consists of power relations implies that it is not neutral. Rather, it is a social relation of domination. Because of the general acceptance that the state involves social domination, it is common to single out the monopoly of violence or force as its organising principle. It should, however, be pointed out that even the most repressive state does not always regulate and organise society through

¹ For a discussion of modernisation and dependency theory, see Snyder 1980.

force. Rather, it relies on a combination of institutions which perform ideological, bureaucratic, repressive and legal functions.

Every state is a product of unique and historically specific social struggles. Hence the analysis of the Zimbabwean state has to be both historical and sociological.² Historically, it is axiomatic that the modern African state owes its origins to colonisation and colonialism. Except in very few situations, the institutions and apparatus of the colonial state were inherited intact by its post-colonial successor. In Zimbabwe, the decolonisation process and the independence constitution which institutionalised the transfer of state power ensured that the post-colonial state not only inherited the institutions and apparatus of the colonial state, but also its personnel (Mandaza 1986).³ More important, the decolonisation process ensured that colonial social relations of production were inherited intact (Astrow 1983, Mandaza 1986, Stoneman and Cliffe 1989). This had implications for the agrarian question since agrarian reforms originate in changes in the balance of power in society (Sobhan 1993:4).

Sociologically, the nature of the state, and therefore, of programmes that it implements, is determined by the character of the social forces which control it. In other words, the exercise of the organisational and coercive power of the state is shaped by the character of the social classes which control it. The ultimate goal of political struggles is the control of the state. However, the control of the state is a means to an end rather than an end in itself. Social forces wage political struggles either for the control of the existing state or for purposes of transforming it into a different type of state. In both situations, the aim is to use the state's organisational and coercive power for purposes of implementing socio-economic programmes.

The Zimbabwean liberation struggle was waged by a broad coalition of social forces representing a range of interests reflecting the positions occupied by the different forces within the colonial political economy. What united the different social forces was their opposition to

² Nyong'o (1987:17) makes a general observation that the in Africa, the nature of the state can be understood only from an historical and sociological analysis.

³ For a detailed discussion, see Chapter 3.

settler colonialism which discriminated against and impinged on them in different ways. For instance, the peasantry participated in and supported the struggle because of their grievances over a cluster of issues which constituted the agrarian question. Thus, for the peasantry the control of state power would only be meaningful if used for purposes of agrarian reform. Given the broad coalition of forces struggling against colonialism, the control of state power, when it was eventually won, was bound to fall into the hands of a section within the coalition. Hence the control of post-colonial state power did not mean that the socio-economic programmes of the different social forces that comprised the liberation movement would automatically be implemented. What it meant was that those who inherited control of the institutions and apparatus of the colonial state would use it to implement socio-economic programmes reflecting their own class interests and the context within which they exercised state power.

In Zimbabwe the decolonisation process culminated in the transfer of state power from the settler minority to the petty bourgeoisie section of the liberation struggle (Astrow 1983, Mandaza 1986, Sibanda 1988). Some commentators have argued that the state is neo-colonial because of the petty bourgeois leadership of the liberation struggle which saw the struggle as a means of pressurising the white minority into conceding majority rule rather than overthrowing capitalism (Astrow 1983, Mandaza 1986). Such an analysis runs the danger of ascribing a particular class character to the state and then deducing the nature of policies and reforms from that class character.⁴ There is always a danger of being reductionist and teleological in the analysis of the state and its policies (Moyo 1992).

The transfer of power to the petty bourgeoisie has been a common phenomenon in the African decolonisation struggles. Cabral (1980:134) argued that the petty bourgeois social stratum was the only one capable both of having consciousness in the first place of the reality of imperialist domination and of handling the state apparatus inherited from that domination. He further argued that the unpredictability and complexity of the trends inherent in the

⁴ Hussain and Tribe (1981b:149) caution against such an approach and point out that 'The attribution of a particular class character does not solve the problem of the nature of the policies and reforms: the latter cannot be evaluated by a process of deduction from the former'.

economic situation of the petty bourgeoisie as class was a weakness of the national liberation movement.⁵ Colonialism precluded the emergence of an African bourgeoisie with a secure economic base and a clear vision of how to transform post-colonial society. In the absence of a bourgeois class, the mantle of leading the anti-colonial struggles fell on the shoulders of the petty bourgeoisie. Their strategic advantage over other social forces was the possession of European education and, therefore, the ability to take over the colonial state.

The category 'petty bourgeoisie' denotes a class which combines different class positions in a contradictory unity (Gibbon and Neocosmos 1985). In his analysis of social-democracy in France, Marx (1968:121) argued that the petty bourgeoisie demand democratic institutions as a means, not of doing away with capital and wage-labour, but of weakening their antagonism and transforming it into harmony. It strives to transform society in a democratic way but within its own bounds. He cautioned against the notion that the petty bourgeoisie wanted to enforce an egoistic class interest. Thus in analysing the manner in which the petty-bourgeoisie has exercised state power in Zimbabwe it is important to bear in mind the contradictory character of the class and the fact that it is incapable of enforcing an egoistic class interest.

However, the character and interests of the social forces which control the state do not sufficiently explain the manner in which state power is exercised. The exercise of state power always takes place in and responds to historically specific national and international contexts. Nyong'o (1987:16) correctly argues that the capacity of the state to intervene in economic development is heavily conditioned by the constellation of socio-economic forces facing it nationally and internationally. These forces constitute the context in which political power is exercised and hence the extent to which programmatic philosophies, ideologies and ideas become operational. Thus, the nature of the socio-economic programmes, such as agrarian reform, that the Zimbabwean state has implemented have been shaped by a combination of

⁵ The contradictions and limitations of the class that inherited state power in Africa is brilliantly analysed by Fanon (1967).

national, regional and international forces confronting it (Mandaza 1986, Stoneman 1988, Stoneman and Cliffe 1989).⁶

Notwithstanding the importance of national and international social forces in determining the exercise of state power, it is also important to analyse the ideologies which provide the post-colonial state with legitimacy. What gives it legitimacy, the ability to regulate social conflict, and to organise the reproduction of social relations, is its capacity to address, or appear to address, the concerns of different social forces. For what should not be overlooked is the level of political consciousness that was generated by the liberation struggle. In this respect, Moyo (1992:311) is correct when he suggests that an

understanding and explanation of state politics generally should be prefaced by a rigorous description of the prevailing forms of domination ... against a background of their logical causes and legitimating interests, given specific social interests.

The next section analyses the ideology of nationalism which mobilised support for the anti-colonial struggles and has structured and legitimated the exercise of post-colonial state power.

1.2 Nationalist Ideology and Agrarian Reform.

Nationalist ideology has not been given sufficient emphasis in explaining the manner in which state power has been exercised in Zimbabwe and Africa in general. It is important to appreciate the material circumstances under which nationalist ideology developed in order to understand the manner in which state power has been exercised. Nationalism arose as an oppositional ideology to colonial ideologies which justified European domination and exploitation on the grounds that non-Europeans were uncivilised and therefore had to be colonised as part of the civilising mission (Chatterjee 1985). Colonialism plundered the economies of non-European societies. It exploited, marginalised and impoverished the colonised and then used the same as evidence of their backwardness. Nationalism thus confronted colonial ideologies and the poverty and marginalisation of the colonised simultaneously. It mobilised opposition to colonialism through a rejection of racist

⁶ See Chapter 3, 4, and 8 for a comprehensive discussion of the national and international forces which have shaped the programmes which the state has implemented.

ideologies on one hand and promises of transforming colonial social relations through modernisation on the other. In Chatterjee's words:

It thus produced a discourse in which, even as it challenged the colonial claim to political domination, it also accepted the intellectual premises of 'modernity' on which colonial domination was based (1985:30).

The modernisation at the heart of the nationalist project was nothing but an evolutionary conception of social development. Nationalism thus accepted functionalist conceptions of societal modernisation as involving the development of societies from lower to higher stages.

In its opposition to colonial ideologies African nationalism developed a number of counter ideologies. One important counter ideology was the creation of a positive African identity in contradistinction to the negative one created by Europeans. However, the positive identity was created by turning negative Eurocentric ideas upside down and presenting them as the African's own conception (Serequeberhan 1994). For example, a prominent African nationalist, Senghor (1964:72), argued that:

In contrast to the classic European, the Negro African does not draw a line between himself and the object; he does not hold it at a distance, nor does he merely look at it and analyse it. After holding it at a distance, after scanning it without analysing it, he takes it vibrant in his hands, careful not to kill or fix it. He touches it, feels it, *smells* it (original emphasis).

It does not take much to recognise ideas about the noble savage presented as the essence of African identity. This is what Appiah (1991:354) calls "'alterism": the construction and celebration of oneself as Other'. The construction of alterism was at the centre of ethnophilosophy whose main characteristic 'became the unreserved and eloquent defence of African traditions, but that defence was 'expressed in imitation of the dominant Western culture as the validation standard' (Masolo 1994:40). African nationalism thus accepted the Otherness of the Other as presented in European modernity as constitutive of African identity.⁷ As Mudimbe (1988:184) points out:

⁷ In similar vein, Chatterjee (1985:38) observes that 'the object of nationalist thought is still the Oriental, who retains the essentialist character depicted in Orientalist discourse. Only he is not passive, non-participating. He is seen to possess a 'subjectivity' which he can himself 'make'.

Many African leaders, in order to legitimize a political process and to establish the right to differentiate themselves from colonizers, accepted such colonial anthropological concepts as tribe, cultural particularism, etc.

The construction of an positive African identity out of negative Eurocentric ideas involved an implicit acceptance that Africans were on the lower rungs of social progress and, therefore, the need for modernisation.

Another important nationalist counter ideology was the claim to be struggling for a socialist transformation presumably because of the emancipatory possibilities that socialism offered. In any event, capitalism was tainted by its colonial form which African nationalism opposed. Moreover, liberation movements which resorted to guerrilla warfare, such as those of Zimbabwe, received invaluable material support from socialist countries. In most cases, socialism was to be constructed out of the essential communitarian attributes of African societies. In other words, socialism was to be constructed out of attributes inhering in African identity, an identity constructed out of negative Eurocentric ideas. For example, Mugabe (1983:180-181) argued that:

In respect of agriculture, we have no difficulty because our own traditional system is identical with the Marxist-Leninist approach: at least, in so far as ownership of land is concerned. Land has never belonged to individuals ... It has always belonged to the People as a whole. We must *go back to that traditional position* which as I have said, coincides also with our present scientific thinking (own emphasis).

Mugabe's argument is that communal ownership of land is an inherent feature of African societies. The historical specificity of the concept of communal tenure is thus denied and it (the concept) is elevated to an essential and transhistorical characteristic of African societies.

The idea that communitarian attributes were essential to African societies was a product of colonial social relations in two respects. First, colonialism identified communalism with lower stages in the development of society. As such, it would progressively be replaced by individualism in the process of social evolution and modernisation. While colonialism saw the communitarian attributes as inimical to modernisation, it supported them for purposes of maintaining law and order. Second, in the face of massive colonial expropriation of land and the creation of private property rights for the settlers, supposedly pre-colonial forms of tenure became one of the rallying points of opposition to colonialism. In mobilising opposition to

colonialism around the land issue, nationalism accepted communal tenure as an essential feature of African societies. Hence Mugabe's suggestion for a return to the traditional position. Thus colonialism and nationalism agreed about the essential character of communal tenure for different reasons. Within the nationalist project, the communitarian attributes were to be mobilised in the process of nation-building.

The point to emphasise is that nationalism as an oppositional ideology was constructed out of negative European ideas about the essential characteristics of Africans. This was obviously an inherent limitation. The appeal of nationalist ideology was its promise to restore the dignity of the colonised and its undertaking to transform the conditions of the wretched of the colonial world. The transformation was to be achieved through modernisation conceived of as involving the movement of societies from lower to higher stages of development. In the circumstances, nationalist ideology sought to use the organisational and coercive structures of the inherited state for purposes of modernisation. There was thus an apparent contradiction within nationalist ideology. On the one hand, nationalist ideology asserted an African identity, albeit an identity based on Eurocentric ideas turned upside down, while on the other it accepted the backwardness of African societies as conceived within modernism and saw their transformation, through modernisation, as its goal.

The assertion of African identity involved the recognition of African traditional institutions which, in most cases, had been created or recreated by the colonial state for purposes of legitimation. Modernisation on the other hand gave 'primacy to the sphere of the economic, because it is only by a thorough reorganisation of the systems of economic production and distribution that enough wealth can be created to ensure social justice for all' (Chatterjee 1985:133). In terms of modernisation theory, tradition hinders modernisation. Thus the commitment to both tradition and modernisation was contradictory. In some cases, the contradiction has been resolved by subordinating tradition to modernisation. Tradition has been seen as hindering the reorganisation of the economy in order to create wealth for redistribution and the alleviation of poverty. Neo-traditionalism has, however, been retained for purposes of legitimation.

In Africa, the practice of giving primacy to the economic sphere has created a new ideology: the ideology of developmentalism which 'centres on the terrain of economics where both law and politics are superseded' (Shivji 1991:31). What has been superseded is popular politics and democratic legal forms. Within the ideology of developmentalism, law and the state are merely instruments of development. Since law and state are conceived in instrumentalist terms, the colonial state and its legal order were inherited intact and then used for purposes of development. After independence those who inherited state power showed that they were interested in the idea of a single party that would monopolise politics and control the state apparatus for purposes of modernisation. Inherent within nationalist ideology is the acceptance of modernisation within the global division of labour created under the imperialist expansion of capital. The global division of labour, however, constrains economic development and thus undermines the legitimacy of the post-colonial state.

Despite its limitations, the achievements of nationalism should not be underestimated. In the struggle against colonialism, nationalist ideology was progressive and mobilised opposition which defeated racist domination. Decolonisation, however, exhausted the possibilities of nationalist ideology. In most cases, it has not been up to the task of transforming colonial social relations. As argued below, it has reproduced policies and laws similar to colonial ones.

1.3 Law and Agrarian Reform.

Law is one of the forms through which state power is exercised and mediated. In other words, the state regulates and organises the reproduction of society through, *inter alia*, law. In law, socio-economic power relations and political decisions assume a juridical form. Political decisions, by their very nature, are products of socio-economic power relations within society which are mediated through the state. Law as a regulatory and organisational form mediates power relations between the state and society and between citizens *inter se*. Both 'social domination and the struggles it engenders are mediated through the state and law.

Law essentially mediates and regulates the reproduction of historically specific social relations. As Chanock (1985:11) correctly argues, law cannot be separated from social life,

nor placed in context because it is part of the context. In this respect, law is a contingent aspect of social relations. It is contradictory because it expresses, reflects and mediates the contradictions within society. Law shapes and is shaped by social relations. It is a form of social regulation which combines coercive and ideological elements. In other words, it regulates and facilitates the reproduction of social relations of domination and exploitation through both coercion and ideology.

Thus, the positivist view of law as a set of internally coherent and unified body of rules which are compatible with each other is inadequate because it does not take cognisance of the social relations of which law is but an aspect. Positivism depoliticises law, or rather, it legitimates the existing political order and social organisation. The conception of law as context-neutral is an affirmation of the existing power relations in society. Equally, approaches 'which take law as given and see it in relation to society in such instrumental terms as bringing about change, problem solving, and policy implementation, or simply in terms of effectiveness' (Fitzpatrick 1992:6) fail to problematise law. Such approaches presuppose the separation between law and society. According to such approaches, law, in its autonomy and untainted purity, is always available to be used by those in power to resolve problems and contradictions within society. Since it is separate from society, law is uncontaminated by the problems and contradictions within the former. What such approaches fail to acknowledge is that law takes the existing power relations of domination and exploitation in society as its presuppositions. Hence it cannot be taken as given and as a neutral instrument which can be used for purposes of social engineering.

The argument that law is an aspect of social life implies that there is no law which should be privileged as providing a normative standard upon which other laws are judged. For to do so would be to essentialise the historicity of particular societies and their forms of organisation and regulation. For example, liberal law with its organising principle of the autonomous individual legal subject as the bearer of legal rights is law in as much as permissive law which is organised around wide discretionary state powers. To hold out liberal law as the normative standard against which other laws are judged would be to privilege and universalise European modernity and its forms of social organisation and regulation. This is

not an acceptance of absolute relativism. Rather, what is suggested here is that an analysis of law should be located within historically specific social relations. Ultimately, the issue is whether law is democratic or authoritarian and, since law gives juridical form to and cannot be separated from social relations, this can only be determined through an analysis of historically specific societies.

In the light of the foregoing discussion, law in Zimbabwe can only be properly appreciated as an aspect of colonial and post-colonial social relations. Thus, an analysis of law in Zimbabwe has to be both historical and sociological. During the colonial era, law was part and parcel of the racist relations of domination and exploitation. It regulated and facilitated the reproduction of colonial social relations, including agrarian relations of production. It combined coercion with colonial ideologies regarding Africans. As argued in Chapter 3, the colonial legal order was inherited by the post-colonial state. As elsewhere in Africa, the colonial political and legal orders were inherited to reinforce despotism in the post-independence period (Shivji 1991:29).

The authoritarian state and legal order survived notwithstanding the liberal constitutions, the ultimate gift of the civilising mission, which the departing colonisers saw fit to bestow on the new rulers who, unlike the colonisers, could not be trusted to rule without constitutional restraints. Commenting on authoritarian legal orders, Shivji (1991:31) observes that one of the characteristic features of the law is that it is of an enabling kind. It empowers and gives wide and unrestricted powers to the executive organs of the state to effect a wide variety of functions. State domination is unmediated with the result that force is apparent on the surface of law. The use of the coercive power of the state 'plays an integral role in establishing, reinforcing and reproducing civil/economic relations' (Shivji 1991:31). As argued below, the inherited enabling laws have been used in an attempt to modernise the peasantry.

1.4 The Agrarian Question.

The agrarian question comprises a cluster of historically and geographically specific political, economic and legal issues which concern agriculture and social relations among agricultural producers.⁸ In this respect, Mamdani (1987) and Neocosmos (1993) argue that in Africa, unlike in Asia and Latin America where the agrarian question is synonymous with the land question and agrarian relations with landlord/tenant relations, the peasant has never had a landlord and the agrarian question is not synonymous with the land question.⁹ They argue that in Africa the agrarian question essentially concerns the direct oppressive relations between the state and the peasantry. The merit of their interventions is that they emphasise the historical and geographical specificity of the agrarian question in Africa and the particular coercive forms it assumes.

The land question, that is the concentration of the ownership of land in the hands of a minority of the population and the concomitant quasi-feudal landlord/tenant relations, is a particular and historically specific manifestation of the agrarian question. But the land question goes beyond the mere concentration of land in a few hands which is the economic aspect of the agrarian question. Ownership of land provides the economic basis for the domination and exploitation of those without land. In addition, the land question has a political aspect which usually assumes the form of state support for exploitative landlord/tenant relations. There is thus an articulation of class domination and exploitation through the ownership of land with state domination.

In Sub-Saharan Africa in general, there is no landlord class which dominates and exploits a tenant class through private ownership of land. In other words, class domination and exploitation is not mediated through private ownership of land. Rather, social domination and

⁸ For example, in his numerous writings on the agrarian question in Russia, Lenin saw the agrarian question as a question of the domination and exploitation of the peasantry by feudal landlords. For him, the feudal relations of production based on the latifundia depended 'on the retention in the countryside of a huge agricultural reserve army of thoroughly impoverished peasants' (Harding 1983a:285). He also argued that the latifundia was the basis of the oppression that was stifling the peasantry and retarding its development (Lenin 1917a:334) and that the existence of the landed estates in Russia was the material stronghold of the power of the feudal landlords (Lenin 1917b). For discussions of the writings of Lenin and Kausky on the agrarian question, see Hussain and Tribe (1981a, 198ab).

⁹ Ethiopia, prior to the 1974 revolution, was the exception to this general observation.

exploitation is unmediated and is experienced as direct state domination of agricultural producers through such forms as state ownership of land and the extraction of surplus through marketing boards or coercive measures. The oppressive relations are a product of colonial experiences regarding the integration of different parts of Africa into the global capitalist economy. The nature of integration determined colonial agrarian policies.

Amin (1972) has divided the colonial experiences of Sub-Saharan Africa into three categories. The first category comprises what he calls Africa of the colonial trade economy. While prior to colonisation these countries were initially integrated into the global economy through the slave trade, under colonialism they were integrated through tropical agricultural export crops such as coffee, cocoa and palm-oil. Through a variety of colonial policies such as taxation, African producers were compelled to produce cash crops for export. Hence there was limited colonial land expropriation. The colonial state appropriated surplus through taxation and unequal exchange.

The second category comprised what Amin calls Africa of the concession owning companies. This category encompassed countries of central Africa which were colonised by France and Belgium through concessionary companies. The concessionary companies were interested in maximum exploitation of the natural resources of the region with minimum investment. Hence these countries were integrated into the global economy through the export of rubber, timber and ivory. The final category comprised the Africa of the labour reserve economies. This encompassed countries of eastern, central and southern Africa whose economies were either dominated by settler plantations, or mining, or both. In most countries in this category, colonisation involved large scale expropriation of land for two reasons. First, the establishment of settler plantations necessitated the expropriation of land. Second, the expropriation of land was one of the strategies which were employed in order to compel Africans to sell their labour power to the mines and plantations.

In countries which fall under the first two categories and most of those in the third, the agrarian question is synonymous with the state-peasant relations of domination and exploitation through state ownership of land and the extraction of surplus through marketing boards and coercive measures. In some countries in the third category which were settler

colonies, such as Zimbabwe, the agrarian question comprises the concentration of land in the hands of a minority which is predominantly white, and state-peasant relations of domination and exploitation through state ownership of land and direct and indirect subsidies to the agrarian bourgeoisie such as the provision of credit and infrastructure such as roads. These issues are discussed below.

1.5 Land Ownership Patterns

The land question in Zimbabwe revolves around the ownership of a substantial amount of land by a minority of capitalist farmers most of whom happen to be of European origin due to the settler colonial history of the country. As shown in Chapter 2, colonialism involved the expropriation of large parts of the country and the concentration of land in the hands of European settlers. While anti-colonial struggles centred around the liberation of land and its redistribution, the inequitable distribution has survived the achievement of independence as a result of, among other things, the stringent constitutional protection of private property in land. At the Lancaster House Peace Conference the British government insisted on the protection of the ill-begotten settler gains through liberal constitutional restraints and the strict protection of private property as a fundamental human right.¹⁰

While the constitutional constraints prevented large-scale acquisition and redistribution of land, they at least allowed the new black ruling class to acquire private property rights in land. A small number of blacks has since joined whites as landowners. Thus, the ruling class has not been averse to using (or abusing) their control of the state apparatus for personal ends. The state has acquired 2 74 000 million hectares of former settler land for redistribution since 1980. In addition, some state land has been redistributed. Altogether, 3 179 703 hectares have been redistributed to the peasantry (Land Commission 1994a).

While the ownership of land is inequitable, agrarian relations are not equivalent to landlord/tenant relations. Hence the Zimbabwean peasantry has never had a landlord. What is at issue therefore is the ownership of a substantial amount of land by a few capitalist farmers

¹⁰ See Chapter 3 for a discussion of the property clauses of the Lancaster House Constitution.

while large numbers of peasants are either landless or have insufficient land. The history of settler colonial expropriation of land assigns a special significance to the present landholding patterns.

The constitutional provisions relating to the protection of private property have not been the only constraints on land redistribution. An equally important, if not more important, factor has been the economic implications of radical land redistribution. The inherited economy had certain structural features which made land redistribution a high risk issue. As argued in Chapter 2, by 1980 capitalist agriculture and secondary industry were closely interlinked. Capitalist agriculture provided industry with inputs and a market and vice versa. Agricultural exports accounted for about 40% of foreign exchange earnings. Capitalist agriculture was the biggest employer of labour. In the circumstances, the post-colonial state has been risk-averse in matters relating to land reform.

Land redistribution has been reduced to efficiency versus equity arguments. Arguments against land redistribution suggest that the equity gains that would ensue from land reform would be nullified by losses in efficiency and productivity and that this would have adverse implications for employment, food security, and export earnings (Whitsun Foundation 1983, Kinsey 1982,1983, World Bank 1983). This utilitarian argument suggests that society as a whole is better off with the current land distribution patterns notwithstanding the consequent inequalities. While proponents of the argument accept the need for land redistribution, they prefer market redistributive mechanisms with minimum state intervention. For example, the World Bank (1991) recommends the acquisition of 3,5 million hectares of under-utilised land through market based methods. This is the amount of land which may be acquired before Pareto optimality is reached.¹¹ Implicit in the above arguments is the idea that peasant agriculture is less efficient and therefore less productive than large scale capitalist agriculture. As Weiner (1991) points out, rehashed colonial arguments which suggest that peasant agriculture is constrained by cultural and traditional factors have been produced to show that large scale capitalist agriculture is more productive and uses land more efficiently.

¹¹ See Chapter 8 for a discussion of the World Bank recommendations.

The underlying premise of the above arguments is the acceptance of the inherited relations of production and the consequent accumulation strategy. As shown in Chapter 2, Zimbabwe was integrated into the global capitalist economy through mineral and agricultural exports on one hand and capital imports for secondary industry on the other. In the main, colonial accumulation was based on the extraction of surplus value through the purchase of the labour power of migrant workers below its value. While migrant labour was free to sell its labour-power, it remained tied to the land (Neocosmos 1993). Labour-power was purchased below its value because capital was only partially responsible for meeting the reproduction needs of migrant labour households. Migrant labour households were partially responsible for meeting their reproduction needs through peasant agriculture. Hence the tying of migrant labour to land. In capitalist agriculture, accumulation was based on quasi-feudal forms of surplus value extraction. Because of the low wages paid to labour, there was thus a small internal market. Thus the export-dependent accumulation strategy. Attempts to transform the accumulation strategy evoked resistance which culminated in the unilateral declaration of independence. As Chapter 4 shows, the inherited accumulation strategy has been retained.

Another important aspect of the mode and relations of production was the marginalisation of peasants through discriminatory agrarian policies. In addition to the colonial low-wage policy, the marginalisation of the peasantry foreclosed the development of an internal market. Low peasant productivity resulting from the discriminatory agrarian policies was interpreted as emanating from traditional subsistence-oriented production processes which militated against accumulation. Post-colonial utilitarian arguments are premised on the idea that peasant production processes are traditional and therefore subsistence oriented. Is this the only explanation for low peasant productivity?

During the colonial era radical literature suggested that peasant productivity was low because the peasantry were subjected to a systematic process of proletarianisation by the colonial state representing the interests of mining and agrarian capital (Arrighi 1973a, Arrighi and Saul 1973, Palmer 1977a, 1977b).¹² Proletarianisation was said to have been caused by

¹² For a critique of the linear proletarianisation thesis, see Levin and Neocosmos (1989), Neocosmos (1993).

colonial policies such as the expropriation of land and the creation of reserves, taxation, forced labour, etc. (Neocosmos 1993:26). The assumption was that colonial policies invariably had a uniform impact and functional consequences and that black rural areas were underdeveloped and made poor by capital in search of cheap labour (Phimister 1988a). The literature provided a functionalist explanation of the state of the rural areas from the perspective of capital and presented the peasantry as hapless victims. As Ranger (1985) and Phimister (1988a) have shown, the impact of colonial policies on the peasantry was not uniform and differentiation occurred as some peasants engaged in accumulation while others were forced into wage labour.

Recent research on rural social relations has shown that a small percentage of peasant households are capable of accumulating (Cousins et al 1992). Cousins et al applied a theoretical framework which conceptualises the peasantry as petty commodity producers within capitalist relations of production in their analysis of peasant relations of production.¹³ Petty commodity producers are seen as a social category which, while reproduced within capitalist social relations, is not reducible to capital or wage labour. While they are not reducible to capital or wage labour, petty commodity producers 'are unable to reproduce themselves outside the circuits of commodity economy and divisions of labour generated by the capital/wage labour relation and its contradictions' (Bernstein 1988:261).¹⁴

Petty commodity producers possess the means of production necessary to produce commodities and they engage in production on the basis of unpaid household labour alone (Gibbon and Neocosmos 1985:170). They are, however, not a homogeneous category. According to Bernstein (1992:30) the distinctive feature of

contemporary peasants within capitalism is that they are petty commodity producers subject to processes of class and other forms of social differentiation, which can be charted through pressures on simple reproduction on one hand, and opportunities for accumulation on the other.

¹³ For a comprehensive elaboration of the theory, see Gibbon and Neocosmos (1985), Bernstein (1988, 1990a, 1992) and, Levin and Neocosmos (1989).

¹⁴ A short but important critique of theory as developed by Gibbon and Neocosmos (1985) is undertaken by Cliffe (1987). Bernstein (1988) addresses some of the concerns raised by Cliffe.

Rich peasants may engage in accumulation on the basis of household or hired labour, while poor peasants may become semi-proletarians who have to sell part of their labour-power to reproduce themselves, or proletarians who only reproduce themselves through the sale of labour-power. Middle peasants are just able to meet the demands of simple reproduction without the sale of labour-power. Within the peasant household, class positions of capital and labour may be distributed differentially among the members of the household (Gibbon and Neocosmos 1985:178). Patriarchal heads of households may represent more the class place of capital, while women and children more the class place of labour (Bernstein 188:266).

Cousins et al. (1992) have identified four categories of rural households in Zimbabwe. Households in the first category are able to reproduce themselves from rural production alone. Cousins et al (1992:12) have designated this category of households as *petty commodity producers* or middle peasants. Households in the second category reproduce themselves from a combination of rural production and wage labour. This category has been designated as *worker-peasants* in order to capture the duality of their class determination (Cousins et al. 1992:12). Households which constitute the third category are unable to reproduce themselves without outside assistance from other households or the state. They are the *lumpen-peasantry*. In the fourth category are the households which regularly produce a surplus, invest in agricultural means of production and hire significant amounts of wage labour. They engage in expanded reproduction (Cousins et al. 1992:11). These are the rural petty bourgeoisie who constitute 10% of rural households (Mhone 1994).

Cousins et al. identify four processes which enhance social differentiation. Differentiation is a result of unequal access to means of production such as land. It is also a result of the articulation of agricultural production with non-agricultural activities such as wage labour. In addition, differentiation through economic processes intersects with spatial and gender differentiation as well as differentiation arising out of generational cycles. Finally, those occupying local political office may have privileged access to resources thus contributing to increased social differentiation.¹⁵

¹⁵ See also Pankhurst (1991).

Thus, only the rural petty bourgeoisie who constitute a small percentage of rural households are in a position to produce marketed surpluses. The majority have limited or no access to the means of production, including land, and therefore are incapable of accumulating and thus do not provide an internal market. Low productivity is therefore not an inherent feature of peasant production processes. Peasant marginality, rather than traditional production processes, accounts for the low productivity of most peasant households. What is at issue is whether there is a viable alternative accumulation strategy which can address issues of equity and peasant marginality without sacrificing efficiency and productivity. Is the conception of agrarian reform as a zero-sum game the only viable option?

A number of commentators have questioned the long-term sustainability of the present export-dependent accumulation strategy (Riddell 1980, Robinson 1988, Mhone 1994). On the eve of independence, Riddell (1980:9) argued that

If the development problems of an independent Zimbabwe are to be addressed comprehensively, marginal distribution of land will not be sufficient. What is needed is a sufficient restructuring of land accompanied by a shift away from an externally oriented growth path dependent upon the composition of present exports which are dominated by primary products. Unless an internally and self-reliant development path is taken, economic growth is likely to be characterised by growing unemployment and widening income differentials'.

Widespread redistribution of land has not taken place. Similar arguments have been made since independence and are still being made (Robinson 1988, Moyo and Skalnes 1990, Mhone 1994). What is proposed is an alternative development strategy which would reduce export-dependency and increase the domestic market. Land redistribution would be a key element of the alternative strategy. It would result in an increase in incomes which would lead to increased consumption and savings. The increase in incomes would translate into increased demand for industrial goods which would in turn translate into increased industrial production. Increased industrial production would lead to increased demand for labour and thus reduce unemployment. Moyo and Skalnes (1990) and Mhone (1994) argue that export-led growth and expanding the domestic market are complementary accumulation strategies which can be

pursued at the same time.¹⁶ A growing body of literature sees the alternative development strategy as accumulation from below (Mamdani 1987, Neocosmos 1993).¹⁷

The alternative accumulation strategy has not been tried because the ruling class accepted the inherited export-dependent accumulation strategy. As Chapter 4 shows, the government adopted a policy of growth with equity which did not envisage the transformation of the inherited export-dependent accumulation strategy. Perhaps another reason has to do with the modernist conception of large scale agriculture as being efficient and progressive. With the adoption of structural adjustment in the 1990s, the chances of an alternative strategy are very bleak.

1.6 State-Peasant Relations

1.6.1 State-Peasant Relations During the Colonial Era.

A second aspect of the agrarian question in Zimbabwe concerns state-peasant relations which cannot be separated from the issue of land tenure. For as Neocosmos (1993:67) argues, land tenure is more than a mere legal relation of access to land. It also reflects important relations between the state and the people. While capitalist farmers hold land under freehold tenure, the majority of peasants occupy it under a supposedly communal tenure. Hence the significance of the tenure systems is that they assign different property rights and institutionalise different relations between the state and different sections of society.

Both freehold and communal tenure are products of Zimbabwe's colonial history. When European settlers colonised Zimbabwe, they relied on the imperialist and racist ideology of the time which viewed non-European parts of the world as unoccupied lands. Upon occupation of these lands, European settlers acquired individual property rights while the lands which remained in native hands were communally owned ostensibly under customary tenure. Chanock (1991,1992) and Fitzpatrick (1992) observe that in terms of the dominant discourse of eighteenth and nineteenth century Europe, private property came to be equated

¹⁶ Moyo and Skalnies (1990) cite South Korea and Taiwan as examples of countries which successfully embarked on an accumulation strategy which combined land redistribution and export-led growth.

¹⁷ See also the Report of the Tanzanian Land Commission (1994).

with civilization and law. Unlike the civilized men of Europe who enjoyed private property rights and were governed by law, non-Europeans were considered to be lawless savages to whom ideas of private property were foreign. According to the ideology, societies evolved from lower forms of civilization to higher ones. The movement of societies along the scale of civilization was depicted in terms of binary oppositions such as status and contract, tradition and modernity, irrationality and rationality, and communalism and individualism. Thus in the case of *In re Southern Rhodesia 1919 A.C. 211*, the Judicial Committee of the Privy Council could argue that since Africans were on the lower scale of civilization, private property rights were unknown to them.¹⁸

In Zimbabwe, European settlers were granted individual property rights in land while Africans were allocated marginal and insufficient land in the native reserves in order to force them into wage labour. In terms of Roman-Dutch law of property which applied to the settlers, ownership involved a perpetual and heritable right to use and alienate a clearly demarcated piece of land. Rights of ownership were evidenced by registered certificates of title. The state assumed ownership over all the unalienated land which included land occupied by Africans as property rights were considered foreign to them.

As elsewhere in Sub-Saharan Africa, the colonial state, in collaboration with some sections of African society, invented customary land-rights for Africans (Snyder 1981a, Ranger 1983, Chanock 1985, 1991, 1992). Colonial attitudes to custom and tradition were shaped by two related but at times contradictory ideologies and practices. The first one was an evolutionist ideology which assumed that custom and tradition were characteristic of societies which were low on the scale of civilisation and which had not yet developed ideas of private property. It was assumed that, in due course, under the impact of the European civilising mission, these societies would rise on the scale of civilisation. In the interim, custom would only be tolerated as long as it was not repugnant to natural justice, equity and good conscience or as long as it was not inconsistent with any written law. Custom was expected to disappear in the course of social progress that would ensue from colonisation. The idea was to repress

¹⁸ See Chapter 2 for a discussion of *In Re Southern Rhodesia*.

'otherness' in the name of 'sameness' (Mudimbe 1988). Colonialism and the consequent globalisation of European modernity was predicated on the 'negation of the cultural difference and specificity that constitutes the historicity and thus the humanity of the non-European world' (Serequeberhan 1994:58). The second one was the ideology of law and order. While evolutionist ideas advocated the eradication of custom and tradition, the ideology of law and order sought to harness and mobilise custom and traditional institutions for purposes of maintaining law and order. Functionalist anthropology investigated and confirmed the role of custom and traditional institutions in the maintenance of social order.

Customary land tenure was shaped by both ideologies. The basic features of the reconstructed customary tenure was that Africans held land as a community, that the power to allocate land resided with the chief, and that land was allocated to patriarchal heads of households. Communal and individual land rights were perceived as mutually exclusive. This was consonant with evolutionist ideas. In most British colonies, the administration and allocation of land vested in the chief who could not sell the land (Chanock 1991).¹⁹ Indirect rule was promoted together with the model of customary tenure which vested land allocation in chiefs.

In Zimbabwe, unlike the position in most British colonies where indirect rule was promoted, the law denied chiefs the authority to allocate land for most of the colonial period. Since Zimbabwe was a settler colony, direct rule by white native commissioners rather than indirect rule by chiefs was the official policy. The British High Commissioner argued that the only form of government that natives understood was personal government and that they were accustomed to looking up to the chief. They were supposed to look up to the native commissioner 'as the supreme authority in all matters in which they are concerned' (quoted in Palley 1966:141). Thus the native commissioner replaced the chief. As a result, the authority to allocate land resided with native commissioners who were supposed to apply customary

¹⁹ Chanock (1991) shows that in British colonial Africa, the paradigm of customary tenure was validated and generalised by the Judicial Committee of the Privy Council in the cases of *Re Southern Rhodesia* 1919 A.C. 211, *Amodu Tijani v Southern Nigeria (Secretary)* 1921 A.C. 399, and *Sobhuza II v Miller and Others* 1926 A.C. 518.

law.²⁰ Chiefs were converted into minor state functionaries answerable to the colonial administration for the maintenance of law and order. However, given the small number of colonial administrators, chiefs probably enjoyed *de facto* powers of allocating land. Chiefs were, however, granted *de jure* authority to allocate land in the mid-1960s when, under nationalist pressure, the colonial state sought, rather belatedly, to invest chiefly authority with land administration.

It is, however, important to emphasise that customary tenure combined European ideologies and practices on one hand, and the interests of some sections of African society on the other (Chanock 1985,1991,1992). The colonial state did not invent customary tenure in the sense of creating something novel. Out of conflicting rights, the colonial state chose communal rights since they conformed with evolutionist ideologies. Those sections of African society which supported communal tenure benefited from the choice and therefore supported the colonial state. Since communal and individual rights were considered mutually exclusive, claims for individual rights were discouraged.

The colonial state's support for communal tenure depended on administrative convenience and prevailing economic policies. The vesting of allocative powers in the native commissioner was predicated on administrative convenience and the demands of law and order. Unlike individual rights, communal rights did not impose limits on the power of the colonial state to interfere and reorganise the manner in which Africans occupied and used land. This unrestrained power served both administrative and economic purposes. Thus colonial officials had unrestricted powers in the implementation of both administrative and economic policies. For most of the colonial period native commissioners and other state officials were tasked with implementing interventionist conservation and development policies. They could impose conservation and development policies and still purport to be applying customary law.

In economic terms, communal tenure underpinned migrant labour and maintained the nexus between wage labour and peasant agriculture. Thus in situations of surplus labour,

²⁰ In the evidence submitted to the Morris Carter Commission of 1924-5, most settlers and Africans indicated that they understood land allocation to vest in native commissioners.

migrant labour could always be released to return to peasant agriculture, while in situations of labour shortages peasant agriculture could always be squeezed in order to release migrant labour. However, given the large scale colonial expropriation of land in Zimbabwe and the consequent land shortages, there were limits in the extent to which land set aside for African occupation and use could act as a safety valve for migrant labour. In the context of land shortages and the consequent deterioration in peasant agriculture, the colonial state attempted to abandon communal tenure and introduce limited individual title.²¹

Economic and social pressures thus forced the colonial state to attempt a modernisation of communal tenure. The attempt was opposed by Africans who asserted communal tenure in defence of their rights in the land set aside for them. Given the colonial expropriation of land and state intervention in the manner in which Africans occupied and used land, the assertion of communal tenure was a defensive mechanism. The colonial context within which Africans opposed attempts to introduce individual rights should be properly appreciated. Their opposition was not a defence of immutable pre-colonial communal land rights. It was a defence of existing land rights mediated through colonial ideologies. Communalism was thus a counter ideology. And as a counter and therefore a defensive ideology, it asserted that communal tenure was an essential and immutable feature of pre-colonial African societies. Colonialism was thus hoisted with its own petard. This was the position of the Zimbabwean liberation movements.

1.6.2 State-Peasant Relations in the Post-Colonial Period

The different tenure systems and, consequently, the different rights they assign, have survived independence. Since land tenure reflects relations between the state and citizens, the survival of the different tenure systems in the post-colonial period reflects the different relations between the state and different social groups. An additional tenure system has been introduced for land which has been acquired and redistributed since independence. Ownership of land

²¹ In 1951 the colonial state enacted the Native Land Husbandry Act which attempted to introduce individual title. See Chapter 2 for a detailed analysis.

vests in the state while peasants hold it on the basis of a permit system.²² There is thus no single national law regulating the issue of land rights. Freehold tenure and the private property rights that it protects have survived because of, *inter alia*, the constitutional protection that it continues to enjoy. What has changed is the racial character of landowners as some Africans have joined the landowning class.

Colonial communal tenure has survived for reasons which have to do with nationalist ideology. Nationalism as a counter and defensive ideology saw communal tenure, as reconstructed by the colonial state, as an essential characteristic of traditional society. For example Shamuyarira, a leading member of the liberation movement and a Cabinet Minister since independence argued that:

in African society the chief holds the land in trust for the nation or tribe, but once a piece of land has been given to a subject the chief or headman could not interfere and the possessor could leave the land to his descendants. In customary African law, land is a free gift from God for all human beings to use (1965:89).

He was however, forced to acknowledge that 'commercial life is changing this outlook to the extent that some wild fruits have been sold, and land has changed hands at high prices among some Africans' (1965:89). Even in the face of evidence that communal tenure had changed, nationalism still clung to the essentialist idea of a transhistorical concept of communal tenure. Hence Mugabe's argument for a return to the traditional position in terms of which land belonged to the people as a whole (1983:180-1). The 'people' as conceived within nationalism are synonymous with the state. Mugabe could thus argue that:

What we would like to see established is a system which brings land into the ownership of the People as a whole. This means the state will act as the custodian for the whole People (1983:181).

Nationalist ideology, however, identified the underdevelopment and marginalisation of the agrarian economy with the peasantry's traditional and backward outlook. For example, while acknowledging the devastating impact of colonialism on the peasantry, the leader of ZAPU, Nkomo, argued that:

²² The permit system is discussed in detail in Chapter 5 which deals with land redistribution.

The pattern of land use that has developed in the communal areas is terribly wasteful. ... Cultivated fields are small, and each one must be wastefully fenced against wandering livestock (1984:250).

With respect to land redistribution, he argued that:

But the wasteful farm practices that have been encouraged to grow up in the communal areas would soon destroy that precious asset: and it would be disastrous to encourage new settlements on hitherto underutilised land without at the same time ensuring that the communal lands do not continue to be laid to waste (1984:250)

Nkomo's views represent nationalist perceptions of the peasantry. While making a correct diagnosis of the impact of colonial agrarian policies on the peasantry, nationalist ideology found itself echoing colonial ideas about the nature of the problem. Not surprisingly, it prescribed modernist solutions.

As argued in the foregoing, communal tenure as reconstructed by the colonial state did not impose restrictions on the power of the state to interfere with peasant land usages. The permissiveness of communal tenure has not been lost to the post-colonial state in its pursuit of modernisation policies. As Chanock (1991:62) puts it:

The customary land law, the imagery of which celebrates the entitlement of all as members of the community, has become a component of the dominance of state over society in Africa.

The post-colonial state inherited control of land under the guise of respecting and protecting African customs. Through an unexplained metamorphosis the state becomes the community. Since communal land vested in the colonial state, it was only a short step for the post-colonial state to retain ownership of communal land. The only difference was that it justified the ownership on the basis of custodianship for the people. The state legitimates itself on the basis of an apparent respect for African customs. The apparent respect, however, conceals the continued use of land tenure for purposes of controlling the peasantry. In the words of Chanock (1991:80):

A customary veil has been drawn over national confiscation of rights, and increasing scarcity and the inequality of the existing holdings disguised by the assertion of fictive rights for all. Development has been seen very much as a state initiative and state control of all land was therefore considered to be fundamental.

On one hand the post-colonial state purports to respect African customs, while on the other it arrogates to itself the power to interfere with customary land rights in the name of

development. Individual rights in land are denied in the name of the community, while the fictive rights of the community are subordinated to development goals.

The result has been the continuation of oppressive relations between the state and the peasantry. In Zimbabwe, the relative democratisation that has occurred since the achievement of independence has eliminated oppressive practices such as forced contributions of money, commodities, labour, the forced production of cash crops and the forced extraction of labour. The relative democratisation, however, has not eliminated the ideology of developmentalism. Developmentalism is an attempt to modernise peasant agriculture through technical development. Agricultural modernisation is an abstracted view of capitalist development which is presented as universally replicable. It combines ideas of technical efficiency, that is high input-high output and efficient resource allocation through competition on one hand, and processes of commercialisation which involve specialisation and the division of labour (Bernstein 1990b:6).

Modernisation views the ecological and economic problems faced by the peasantry to be the result of bad traditional methods of farming and customary tenure (Drinkwater 1988). Official thinking is that the problems can be cured through technical development which will instil good land husbandry. The formulation and implementation of technical development programmes remains statist and oppressive. In Fanon's (1967:89) graphic terms, development projects are 'parachuted' from the capital into the villages. Technical development programmes are intended to improve productivity and conserve resources. They depend on the unrestricted powers of the administration over the peasantry. A typical example are the ecological and economic requirements and conditions which are imposed on the resettled peasantry via the permit system of tenure in the resettlement areas. The oppressive relations are predicated on the wide discretionary powers that the state has over the peasantry.

Post-colonial agrarian programmes have thus been reminiscent of colonial ones. Thus the Zimbabwean petty bourgeoisie that inherited state power at independence considers the peasantry to be traditional and therefore low on the scale of modernity. In the evolutionary and teleological conception of social progress, there has been an attempt to use the inherited apparatus of state hot-house fashion in order to move the peasantry along the scale of

development. Considering that the peasantry opposed colonial agrarian policies and supported the liberation struggle on that score, the similarities between colonial and post-colonial policies do not bespeak of selective amnesia on the part of the petty bourgeoisie. Rather, they bespeak of a shared belief that the peasantry are traditional. This Caliban turned Prospero has thus attempted to use the inherited colonial state structures and laws for purposes of modernising and transforming the peasantry in the timeless quest for a universal modernity; hence the commandist and bureaucratic agrarian reform programmes rather than popular participatory and democratic ones.

Conclusion.

This chapter has shown that agrarian reform has been shaped by the manner in which state power has been exercised. It has argued that the exercise of state power has been determined by the decolonisation process and the consequent changes in power relations in society, the class character of the social forces that inherited control of the state at independence, the national and international forces which constitute the context within which power has been exercised, and the ideology of nationalism which mobilised opposition to colonialism. It has also argued that the factors which shaped the exercise of state power have determined the nature of land reform. With respect to the peasant question, it has argued that reform has been determined by the ideology of nationalism. In the following chapters, the theoretical framework is used to analyse different aspects of the agrarian question.

CHAPTER 2.

THE AGRARIAN QUESTION DURING THE COLONIAL PERIOD 1890-1979

Introduction

This chapter examines the origins and development of the agrarian question during the colonial era, that is, the period from 1890 up to 1979. In the main, the chapter demonstrates that the agrarian question was a product of a set of policies which were designed to create conditions for capital accumulation in general and in agriculture in particular. It shows that the agrarian question was a product of colonial primitive accumulation which involved large scale expropriation of land. It argues that the expropriation of land was intended to force Africans into wage labour. In addition, it argues that the expropriation of land was a precondition for the establishment of settler agriculture.

The chapter also shows that the expropriation of land created different land tenure systems for European settlers and Africans. While settler farmers owned land on the basis of freehold tenure, Africans occupied it on the basis of a supposedly 'customary' tenure. It demonstrates that the colonial state did not respect customary tenure. It argues that the different land tenure systems implied different land rights for racial groups and that settlers enjoyed secure rights while Africans hardly had any rights. In addition, the chapter examines the origins and development of settler agriculture. It shows that settler agriculture developed and prospered at the expense of peasant agriculture whose competitiveness was undermined by colonial agrarian policies in order to make the former profitable.

The chapter also discusses the authoritarian relations between the colonial state and the peasantry. It shows that the relationship was political/administrative in character. The chapter argues that the character of the relationship facilitated the oppression and exploitation of Africans. In addition, it analyses the integration of Africans into the capitalist economy. It demonstrates that while some were forced into cheap migrant labour, others could only reproduce themselves on the basis of a combination of wage-labour and peasant agriculture, while others were able to accumulate surpluses. It argues that cheap migrant labour was an essential element of the colonial accumulation strategy. It also argues that peasant producers

were directly and indirectly exploited in order to subsidise settler agriculture. The chapter shows that the impact of colonial policies on Africans was not uniform and argues that the policies accelerated and accentuated social differentiation.

Overall, the chapter situates the agrarian question within colonial relations of production and accumulation strategies. It examines the contradictions arising from different accumulation strategies and the social struggles they gave rise to. Hence the chapter examines the struggles between different sections of capital regarding the creation of favourable conditions for accumulation and the impact of such struggles on the agrarian question. In addition, it examines African resistance to colonial domination. It argues that the resistance shaped the nature of state policies and laws.

The chapter is divided into three broad chronological sections. A thematic approach is, however, adopted within the three broad sections. The first section covers the period of company rule, that is, from 1890 to 1923 when the colony was administered by the British South Africa Company. In 1923 the settlers were granted responsible government by Britain. The second section covers the period of responsible government, that is, from 1923 to 1965. The final section covers the period from 1965 to 1979, that is, the period between the unilateral declaration of independence from Britain and the achievement of independence.

2.1 Company Administration 1890-1923.

2.1.1 Colonisation and Resistance.

The colonisation of Zimbabwe was undertaken by monopoly capital in the form of the British South Africa Company ('the Company') which, between 1890 and 1923, administered the colony as a commercial enterprise. The immediate motive for undertaking colonisation was a sanguine expectation on the part of Cecil John Rhodes, the founder of the Company, and his collaborators that Zimbabwe contained fabulous gold reserves which would rival those which had been discovered at the Rand in the Transvaal. In 1888 Rhodes' emissaries obtained a mining concession from Lobengula, the king of the Ndebele, through a combination of bribery and the support of the British representative in Bechuanaland (Loney 1975:33). On the basis of the concession, Rhodes applied for and was granted a Royal Charter in 1889. Among other

things, the Charter granted the Company capacity to administer and govern the region that comprises present day Zimbabwe; the duty to preserve peace and order in such ways and means as it should consider necessary; the power to pass Ordinances and to establish and maintain a police force; and the *power to make land grants* (own emphasis).¹

Once in possession of the Charter, the Company wasted no time in assembling an 'invasion force' which in 1889 set out for Mashonaland (Phimister 1988a:6). The expedition reached Mashonaland in September 1890 and immediately set about subduing the Shona polities and establishing administrative structures. By 1893 the Company had discovered that the 'Second Rand' did not lie in Mashonaland. It therefore turned its attention to Matebeleland where, assisted by Imperial forces, it used military force to subdue the Ndebele. Following the defeat of the Ndebele, the British government and the Company entered into an agreement in 1894 in terms of which the Company was given the power to govern Mashonaland and Matebeleland according to its Charter and a scheme of administration set out in the agreement (Palley 1966:114). The terms of the agreement were enacted into the *Matebele Order in Council* of 1894.

The dispensation which was introduced by the *Matebele Order in Council* lasted for as long as the Ndebele and the Shona were prepared to live with the Company's avarice and brutality. It did not take long before the Company realised that if the 'Second Rand' did not lie in Mashonaland, it did not lie in Matebeleland either. Out of frustration, 'both Company and the settlers turned to looting the Shona and Ndebele economies' (Phimister 1988a:16). In 1894 an imperial sanction was given for the imposition of a hut tax of 10s. for every adult male and 10s. extra for each wife exceeding one. To add to the above woes, the Ndebele and Shona were forced to work in the mines. A combination of the above factors culminated in the Ndebele and Shona Risings of 1896 which were quelled by the Company. A new constitutional

¹ A detailed discussion of the provisions of the Charter can be found in Palley (1966). The Judicial Committee of the Privy Council also discussed some aspects of the Charter in the case of *In re Southern Rhodesia* 1919 AC 211.

arrangement was introduced in the wake of the Risings by the *Southern Rhodesia Order in Council* of 1898.²

2.1.2 The Expropriation of Land and the Creation of Reserves.

In the initial commercial plans of the Company, land played second fiddle to mineral resources. This, however, is not to suggest that the Company had no plans of expropriating land. As a matter of fact, the Charter gave the Company power to make land grants, notwithstanding the fact that the Charter was purportedly granted on the basis of a mining concession. The members of the expedition force which occupied Mashonaland in 1890 were recruited with the promise of a free farm of 1 500 morgen (3 175 acres) and 15 reef of gold (Palmer 1977a:26). The promise was honoured and the Company gave them free land grants 'under permit of occupation' (Mosley 1983:14). Those who participated in the invasion of Matebeleland were promised and subsequently given more generous grants of 3 000 morgen (6 350 acres) (Palmer 1977a:28). The system of free land grants under permit was later modified to give the settlers the option of outright purchase (Mosley 1983:14).

While the expropriation of land in Mashonaland was gradual and uneven, in Matebeleland it was part of the settlement that followed the Matebele War. The *Matebele Order in Council* made provision for the establishment of a Land Commission which was tasked with assigning sufficient agricultural and pastoral land and cattle for the needs of the Ndebele (sec 49). The Land Commission carried out its mandate in a very cavalier manner as evidenced by the short time it took to perform its duties. Within two months of its appointment, it had assigned the Ndebele two native reserves, Gwayi and Shangani, amounting to 'an estimated 6 500 square miles of waterless, infertile land ... which the Ndebele regarded as *cemeteries* not Homes' (Phimister 1988a:65 emphasis original). In addition, the Order in Council provided that Africans could acquire, hold, encumber and dispose of land on the same

² Palley (1966:132) argues that the changes in the constitutional arrangement, legislative position, administrative and judicial system were informed by a desire to lay the foundations of a future self-government which would eventually join South Africa. It was also informed by a desire to prevent the occurrence of further uprisings and this was to be achieved through the formation of an administrative system to regulate African affairs.

terms as non-Africans. The *Southern Rhodesia Order in Council* enjoined the Company to assign to the Natives inhabiting Southern Rhodesia, from time to time, land sufficient for their occupation (section 89). It retained the right of individual Africans to buy, hold and dispose of land as Europeans (section 83).

In the aftermath of the Risings, 24,8 million acres were set aside for African occupation at the insistence of the British government. The demarcation of the reserves was left to individual Native Commissioners who were given considerable latitude in determining the size of the reserves (Palmer 1977a:67). Mosley (1983:16) observes that 'one cardinal principle was followed: land which was already occupied by Europeans, or which might in future be required for European settlement, was not set aside as African reserve'. Phimister (1988a:65) makes a similar observation that the setting aside of land for African occupation 'was done without overturning the pattern of white land ownership established between 1890 and 1899'. In the main, the land set aside was outside the *highveld* which meant that land with good soils and rainfall was reserved for Europeans.

The *Matebele* and *Southern Rhodesia Orders in Council* vested land in the Company. Thus the Company acquired *dominium* over all the land which had not yet been alienated to the settlers. Land occupied by Africans was considered as unalienated and therefore as belonging to the Company. As the owner of the land, the Company was only enjoined to assign land, from time to time, which was sufficient for the occupation (and not ownership) of Africans. The Company became the landlord and Africans became mere occupants. The allocation of land was left in the hands of Native Commissioners who enjoyed considerable discretionary powers in the regulation of the daily lives of Africans. The relationship between the Company as owner of the land and Africans as occupants was administrative rather than legal in character. What the administrative relation emphasised was the coercive domination of the state and the rightlessness of Africans *vis-a-vis* land. It also emphasised the power of the Company to deal with the land according to its dictates.

In terms of both Orders in Council, Africans had the same right to buy, hold, encumber and dispose of land as Europeans. In practice, however, the Company refused to sell land to Africans. With the creation of reserves, the Company adopted the attitude that the Africans

were only entitled to occupy land in the reserves while the rest of the country belonged to Europeans. If the Company did not allow Africans the right to acquire land outside the reserves, it did not respect the boundaries of the reserves either. Hence between 1908 and 1914 the Company expropriated 500 000 acres of good land from the reserves which was considered suitable for European use (Phimister 1988a:66).

As discussed below, by 1914 there was growing settler opposition to Company rule. The British government recognised that a settler government would most likely be hostile to African interests and would probably encroach on reserve land. In terms of the *Southern Rhodesia Order in Council*, land occupied by Africans vested in the Company which was only enjoined to assign, from time to time, land sufficient for their occupation. The British government sought an arrangement which would shield the land in the native reserves from settler governments. To this end, a Native Reserve Commission was established in 1914 to determine whether land should be set aside solely for the occupation and use of Africans. It recommended the setting aside of land in the native reserves which would be for the sole occupation and use of Africans. The Commission's recommendations were accepted by the British government in 1920 and formed the basis of the *Southern Rhodesia Order in Council* of the same year. The reserves defined by the order were vested in the High Commissioner who held them in trust for the use and occupation of natives. While ownership vested in the High Commissioner, the allocation of land continued to vest in Native Commissioners.

2.1.3 Settler Agriculture

Initially, the Company had no policy on settler agriculture. This is not surprising considering that its interests were mainly in gold mining. While land grants were made to the settlers, very little farming took place between 1890 and 1903 (Palmer 1977a:27-28). Rather than promote settler agriculture, the Company chose to grant large-scale concessions of land to white immigrants who were very often companies with a British or South African base (Mosley 1983:14). As in mining, it hoped that large companies would have more resources than small

capital to develop the territory (Phimister 1988a:58). As a result, 16 million acres, that is a sixth of the country was disposed of between 1890 and 1893. Most of the land ended up in the hands of speculative capital which had little interest in engaging in production (Palmer 1977b:227).

In the absence of settler agriculture, the mines depended on African producers for their food supplies notwithstanding the expropriation of land which had already taken place. For as Arrighi (1973a:195) observes, the expropriation of land did

not mean an immediate restriction on the land resources available to the African peasantry, for they were generally allowed to remain on their ancestral lands upon payment of rent or commitment to supply labour services.

The market for food undermined the Company's policies which were intended to force Africans into wage labour in the mines. These policies included the hut tax which in 1904 was doubled and replaced with a poll tax of £1 on each male over sixteen and 10s. on each wife exceeding one. Many African producers paid their taxes from agricultural income and the mines were forced to rely on migrant labour from outside the colony.

Settler agriculture was, however, given a fillip by the recovery of the mining industry which, from 1904 onwards, provided a growing market (Phimister 1988a:59). An additional boon was the decision of the directors of the Company in 1907 to promote settler agriculture in an attempt to make up for disappointing earnings from mining. The Company used tax revenues extracted from Africans in order to subsidise the development of European agriculture and mining (Arrighi 1973a:197-8). In 1908, the Company established an Estates Department with a mandate to promote European settlement and to process applications for land. A number of support services were offered to settler farmers. A Land Bank was established in 1912 with the declared aim of providing loan facilities to people of European origin only (Palmer 1977a:81-2).

As a result of the above policies, the number of settlers engaged in agriculture increased by 82% between 1907 and 1911. By 1914, about 183 400 acres were under settler cultivation in comparison to 20 000 acres ten years previously. Settler farmers produced maize and tobacco. Production rose considerably thus leading to a fall in prices of both crops.

Between 1911 and 1921 the number of settler farmers increased from 1 324 to 2 355 while 8,5 million acres were alienated to the settlers in the period 1915-1925 (Palmer 1977a:145).

The expansion of productive capital and settler agriculture implied an increased demand for labour in a situation where widespread labour shortages already existed. A number of measures were adopted which were intended to force Africans into wage labour. In 1908 a *Private Locations Ordinance* was introduced with the objective of penalising speculative landowners. It required owners of land to take out a licence of 1s. per annum for each African resident on their farm. Absentee landlords were required to pay 5s. In 1909 the Company imposed rents on Africans occupying unalienated land, while a dog tax was imposed in 1912. The 1914 Ordinance made cattle dipping, at a fee of two shillings per head, compulsory (Phimister 1988a:67).

During this period a pattern of development which was to be a feature of most of the colonial period emerged. Accumulation in settler agriculture was to be based on limiting the competitiveness of African agriculture. In addition, settler agriculture was to benefit from various subsidies from African agriculture, including cheap labour. The agrarian question in Zimbabwe arose from the need to create wage labour for capitalist accumulation in general, and the need to create conditions for accumulation in settler agriculture in particular.

2.1.4 Settler Opposition to Company Administration.

Throughout the period of its administration, the Company had an uneasy relationship with other sections of capital which opposed it for a number of reasons. In the early years, small capital resented the Company's policies which favoured large and frequently unproductive capital (Phimister 1988a:35). Settler agriculture resented the sheltered position enjoyed by mining capital under the law (Phimister 1988a:61). Mining capital resented the 30% of shares reserved by law for the Company.³ Beyond their opposition to the Company the different

³ Palley (1966:191) argues that the settlers considered Company policies on railway and agricultural development, and on legislation governing land and rights to mines and precious stones as being detrimental to development.

sections of capital had differences. The differences between settler agriculture and mining capital stemmed from special water and timber rights that the latter enjoyed under the law. Settler agriculture was represented by the Rhodesian Agricultural Union which was formed in 1904 and the Rhodesian League which was formed in 1912. The League was dominated by farming interests and demanded representative and then full responsible government (Phimister 1988a:97).

In response to the opposition to its administration, the Company made political and economic concessions such as agreeing to an increase in the number of settler representatives in the Legislative Council. Both the political and economic concessions, however, failed to buy off the opposition which demanded an end to Company rule. Due to the opposition, when the Charter came up for renewal in 1914 the British government issued a Supplemental Charter which made provision for the granting of responsible government in the event of an absolute majority of members of the Legislative Council passing a resolution in favour of it.

Among other things, opposition to the Company crystallised around the ownership of unalienated land. The settlers argued that the Company owned the land in its administrative rather than commercial capacity, and that when it ceased to administer the territory, ownership of land should pass to the new government. In 1914 the British government agreed to refer the matter the Judicial Committee of the Privy Council for adjudication. The matter was finally resolved in the case of *In re Southern Rhodesia*.⁴ There were four parties to the case; the Crown, the settlers, the Company and the African people represented by the Aborigines Protection Society. The Company's case was rejected on the grounds that it could not have acquired land by conquest in 1893 since conquest was only valid in the name of the Crown. As for the settlers, the court held that they had failed to prove that the Crown had disposed of its rights to a future government. The case for the African people was that they had rights which they had not ceded. As Chanock (1991:65) argues, it was important to ascertain whether the rights held by Africans were the kind of individual rights of ownership recognised in English law, because if they were, they could not, according to international law, be affected by

⁴ 1919 A.C. 211.

change of sovereignty. The court found that the notion of separate ownership in land was foreign to the ideas of Africans. It held that the Africans of Southern Rhodesia were on the lower end of scale of social organisation such that their conceptions of rights could not be reconciled with institutions of civilised society.

The demand for responsible government gathered pace with the formation of the Responsible Government Association in 1917. The 1920 elections were fought on the issue of responsible government and twelve of the thirteen elected members were returned on that platform (Palley 1966:207). Pursuant to the undertaking made when the Charter was renewed in 1914, the new Legislative Council petitioned the British government to grant the territory responsible government. In a referendum held in 1922 on whether the territory should join South Africa or be granted responsible government, the majority comprising a loose alliance of farmers, white workers, small traders, white women and junior civil servants voted for responsible government. Big capital representing the interests of mining capital favoured union with South Africa (Phimister 1988a:99-100).

An important observation which deserves to be made is that the struggles by other sections of capital against the Company represented struggles to liberate the state and to make it autonomous from the Company and, therefore, representative of the average interests of capital in general. The social power represented by the state should be autonomous from individual fractions of capital so as to ensure fair competition. The vesting of administrative powers in the Company violated this cardinal principle of capitalism. The bat-like character of the Company - one time a state and the other time a commercial entity - aroused the hostility of other sections of capitals. Responsible government represented the separation of the political sphere from the economic. Henceforth the state was at the service of capital in general and different sections of capital had to compete through political processes in order to have their interests represented as the interests of the state.

2.1.5. The Impact of Colonisation on Africans.

The obvious impact of the above policies was to make it difficult for many Africans to reproduce themselves through agricultural production. Many of them were forced to take up

wage labour as a result of the various taxes and fees which were imposed by the colonial state. The growth of settler agriculture spelt doom for many Africans. The Company needed land for new settlers and since most of it had been alienated to speculative capital, the Company resorted to taking land away from the reserves. Between 1908 and 1914, the reserves lost 500 000 acres (Phimister 1988a:66).

The large number of settler immigrants who took up farming led to widespread evictions of Africans from alienated land to the reserves (Arrighi 1973a:203-4). Since the quality of land in the reserves was poor, the movement into the reserves led to a fall in yields. The fall in the price of maize occasioned by increased supplies from settler agriculture led to a fall in the incomes of Africans. Production for the market had, over the years, created a growing dependence on income from the sale of agricultural produce. It had also created new consumption tendencies and tastes for manufactured goods supplied by the capitalist sector (Arrighi 1973a: 200, Phimister 1988a:68). Thus it became virtually impossible for many Africans to reproduce themselves outside wage labour.

The measures imposed by the state did not have a uniform impact on Africans. Phimister (1988a:14-5) argues that on the eve of colonisation, commodity exchange was already developed among the Shona and Ndebele as a result of a combination of established forms and patterns of regional trade and the penetration of merchant capital which pre-dated formal colonisation. The overall effect of the expansion of commodity exchange was the concentration of wealth and the means of production, especially livestock and land, in relatively fewer hands and the impoverishment of the majority. Thus the impact of the various measures adopted by the state 'was mediated by processes of differentiation and stratification already underway in rural areas' (Phimister 1988a:68). There were various forms and causes of rural differentiation. First, there was regional or geographical differentiation which was the result of the uneven expansion of commodity relations. Second, differentiation was shaped by pre-colonial class structures. Third, new opportunities of accumulation emerged. Those who owned cattle could invest in the plough and were able to cultivate larger areas than those who relied on the hoe. They could also hire out their oxen and ploughs. Fourth, differentiation and

class formation also occurred as a result of the re-investment of income earned from wage labour (Phimister 1988a:70-9).

As a result of class formation in the rural areas, there emerged rich, middle and poor peasants (Phimister 1988a:76). Rich peasants were on the brink of transforming themselves into capitalist farmers and began to constitute themselves into a class, while middle peasants just managed to reproduce themselves on the basis of family labour on their land. Poor peasants neither owned large herds of cattle nor owned ploughs. They were increasingly marginalised by the fiscal policies of the state. They increasingly became unable to reproduce themselves through household production and were eventually forced to sell their labour power.

Most women were among the marginalised. Ranger (1978:117) points out that in responding to colonial markets, the key decisions were those which concerned the labour allocation, and that in some societies the necessary labour was obtained largely by making intolerable demands on women. Phimister (1988a:79-80) observes that 'women simultaneously experienced a deterioration in their material conditions of existence, and the intensification of domestic oppression as production relations inside the household were reorganised to accommodate the absence of male migrants'.

The impoverishment and marginalisation of women should be understood in the context of the pre-capitalist division and recruitment of labour. Within the pre-capitalist division of labour, women did most of the cultivation while men cleared the land. The labour of women was acquired through marriage. In many pre-colonial societies of Africa, marriage involved the exchange of the biological reproductive capacity and labour of young women (Snyder 1981a). Men were allocated land upon marriage for it was only then that they had access to the labour of women. Male elders controlled the labour of young men through their ownership of cattle which, in pre-colonial Zimbabwe, were essential for the payment of bridewealth. Marriage was therefore a pre-condition to a man's access to both land and labour. Once men were allocated their own land, they allocated plots to their wives for their own crops. The division of labour was therefore between genders and different generations.

While wage labour offered young men the opportunity of escaping the control of elders, it did not offer the same to women. In the new dispensation, women continued to gain access to land through marriage. In poor households their labour burdens increased as they had to take on the duties performed by men in the pre-colonial division of labour. Their access to land continued to be mediated through their absent husbands. Among the rich, additional wives meant additional labour for expanded reproduction.

Thus peasant producers had differential access to land. The formal position in law was that the allocation of land rested with the Native Commissioner. Recent historiography suggests that in the early part of the colonial period there was self-selection of land rather than chiefly allocation (Ranger 1993). Colonisation and the consequent expulsion of Africans to the reserves disrupted and undermined pre-colonial structures of social control. Because of limited colonial penetration, the pre-colonial structures were not immediately replaced. In the circumstances, self-selection occurred and the amount of land occupied depended on the capacity to utilise it. Given the social differentiation that occurred prior to and immediately after colonisation, rich peasants occupied bigger plots of land than middle and poor peasants.

2.2 Responsible Government 1923-1965.

2.2.1 Segregation and the Depression 1923-1939.

The terms upon which responsible government was granted were enacted into the *Constitutional Letters Patent* of 1923. In terms of the *Southern Rhodesia (Annexation) Order in Council* of 1923 the colony was formally annexed by Britain and was granted the status of a Crown colony with responsible government. In terms of the *Letters Patent*, the British government enjoyed extensive powers of control through, *inter alia*, reserved clauses which allowed it to control certain activities of the Southern Rhodesian legislature. The reserve clauses precluded the Southern Rhodesian Legislative Assembly from passing laws 'whereby natives may be subjected or made liable to any conditions, disabilities or restrictions of which a person of European descent are not also subjected or made liable' (section 28(a)). The right of

Africans to acquire, hold, encumber and dispose of land on the same conditions as Europeans was enshrined in the Constitution. The *Southern Rhodesia Order in Council* of 1920 which vested native reserves in the High Commissioner was also enshrined in the Constitution. In the main, the reserve clauses were more honoured in breach than in observance.

One of the defining features of the agrarian question during this period was the struggle by settler farmers for segregationist policies and the limitation of competition from African producers. Settler farmers attacked the right of Africans to acquire, hold, encumber and dispose of land on the same conditions as Europeans and demanded the division of the colony into separate white and black areas. Successful white farmers, that is a small minority, demanded segregation to protect their investments rather than their markets, while the undercapitalised majority of settler farmers demanded it in order to protect themselves from black competition (Phimister 1988a:194).

In response to settler agitation, the Morris Carter Commission was appointed in 1925 to seek opinion on the issue of land segregation.⁵ The Commission submitted its recommendations in 1925 and recommended segregation on the grounds that 'until the Native has advanced further on the paths of civilisation, it is better that the points of contact between the two races be reduced' (quoted in Hailey 1957:703). The recommendations formed the basis of the now notorious *Land Apportionment Act* of 1930, in terms of which Africans lost their right to acquire, hold, encumber and dispose of land on the same conditions as Europeans. As compensation, they were granted the right to purchase and own land in the Native Purchase Areas, a new category of land which the Act created. Those who bought land in the Native Purchase Areas did not, however, enjoy freehold title. Land was administered by the Native Land Board and purchases had to go through it. Failure to occupy the land beneficially could result in loss of title. The land could only be validly transferred or mortgaged with the consent of the Board. Both testate and intestate succession were subject to the control of the Board.

⁵ The work of the Commission is well discussed in Palmer (1977a) and Moyana (1984). Palmer (1977a:161) observes that the 'choice of personnel made the Commission's acceptance of segregation virtually inevitable'.

The Act set aside 51% of the land in the country for Europeans. Africans were prohibited from holding or occupying land in the European Areas. All urban areas were located in European areas with the result that Africans could not own land in the cities and towns. The Act further created a category of land called unassigned land. It made provision for the Governor to assign parts of unassigned land either to European or Native Areas as the need arose. In addition, the Act set aside Forest Areas and Undetermined Areas. Since Native Reserves had been enshrined in the *Constitutional Letters Patent*, they were left untouched.

The Land Apportionment Act also addressed the issue of Africans who resided on settler farms. Mosley (1983:24) observes that during the inter-war period, the number of white farmers effectively occupying their farms increased and that the black squatter population more than doubled. The Act made provision for rent paying agreements between settler farmers and their African tenants to be terminated by 1937. Thereafter, only labour agreements or agreements carrying no burden at all would be permitted (Palmer 1977a:205). The intention was to end the system known pejoratively as 'kaffir' farming and to force absentee landlords to develop their land. Since the reserves were already crowded, they could not absorb the large movement of Africans. To buy time, the Act was amended in 1936 to extend the time for the abolition of rent payment agreements to 1941.

Another area in which the state intervened to restrict African competition was in the area of markets. Until the 1920s competition between capitalist and peasant agriculture for domestic markets was avoided through the promotion of exports of surpluses produced by settler agriculture (Mosley 1983:43). In the 1920s export prices for beef and maize, commodities which were produced by settler farmers, began to drop to a point where prices were below production costs. In the words of Mosley (1983:43),

this was considered to be a situation critical for the survival of the entire European settler community, as maize growing and stock were seen to be among the few activities accessible to the small undercapitalised settlers rather than large international capital.

Since 1924, the Rhodesian Agricultural Union had been passing resolutions in favour of compulsory marketing and controlled production (Murray 1970:70-1). The government of the day did not respond immediately to the calls for compulsory marketing and controlled

production. While the coalition of interests which included the agrarian bourgeoisie had triumphed over the interests of international capital on the issue of responsible government, 'The settler state form ... was a carefully crafted compromise between local and metropolitan accumulation' (Phimister 1988a:118). Mining capital was interested in keeping prices of food as low as possible as this allowed it to pay low wages thus increasing the surplus value it appropriated. Metropolitan capital was thus opposed to compulsory marketing as this would have increased the price of food.

The government was forced to act when the ruling party started losing seats in by-elections and it was only then that a half-hearted system of controlled marketing was introduced (Phimister 1988a:173). In 1931 the government introduced the *Maize Control Act* and the *Cattle Levy Act*. Meaningful measures were introduced after two changes of government in 1933 and 1934. The new government sought to balance the interests of metropolitan capital with those of local capital. It enacted a number of marketing and production control laws which were intended to create favourable conditions for accumulation for the agrarian bourgeoisie. These included the *Maize Control Act* of 1934, the *Reserve Pool Act* of 1934 which controlled the production of tobacco, the *Cattle and Bounty Act* of 1935 in terms of which the government imposed a levy on cattle slaughtered within the colony in order to pay a bounty on exported cattle, and the *Market Stabilisation Act* of 1936 which established a Board to organise the compulsory sale of tobacco.

With respect to the marketing of maize and beef, the marketing system involved the imposition of taxes on African producers and the payment of lower prices in order to subsidize settler farmers and metropolitan capital.⁶ The Maize Control Act established a Maize Control Board which was responsible for the trade in maize. Traded maize was split into an 'export pool' and a 'local pool'. Maize going into the export pool was purchased at export prices minus operating expenses, while maize going into the local pool was purchased at net local market price. The intention was to purchase African maize at export prices, which were lower than local prices, and then supply most of the local market out of the export pool in order to

⁶ The marketing system for maize and beef is discussed in great detail by Mosley (1984).

obviate consumer opposition. In the main, African producers had very limited access to the Maize Control Board. In the circumstances, African producers sold most of their maize to settler trader-producers who were permitted by the Board to purchase African maize on condition that they paid, to the Board, a tax known as a 'rake-off'. After the deduction of the 'rake-off' and other expenses transport and bagging costs, African producers were paid prices which were far below those obtaining in the export markets and those paid to their settler counterparts by the Board (Mosley 1983:46). Thus the laws introduced a regime of unequal exchange in terms of which African producers were exploited to subsidise settler farmers.

2.2.2 Marginalisation and Resistance 1923 - 1939.

By the 1920s, the reserves were overcrowded and overstocked. The deterioration in the conditions of the reserves was exacerbated by the post-war slump in the prices of maize and livestock and the drought of 1922 (Phimister 1988a:141). The state responded by introducing a number of developmental policies which included the training of agricultural demonstrators, the creation of a Native Trust Fund for the improvement of agriculture, and the establishment of the post of Agriculturalist for the Instruction of Natives. While the objective of the above measures was to improve productivity, they were not intended to create competition between settler farmers and peasant producers.

The cumulative effect of state policies and the slump of the early 1920s was an increase in the rate of proletarianisation. Between 1922 and 1926 the percentage of indigenous African participation in the labour market increased from 20% to 35% (Phimister 1988a:142-3). It is important, however, to highlight the fact that the policies and the slump did not have a uniform impact on the African population. The policies widened already existing forms of social differentiation as those with greater access to means of production benefited from the expansion of commodity relations.⁷

⁷ Arrighi (1973a:203-4) provides figures which indicate the rate of accumulation among Africans. For example, the number of cattle increased from 114 560 to 850 000 between 1905 and 1921, while the number of ploughs increased from 440 in 1905 to 16 900 in 1921 and to 133 000 in 1945. For example, Nkomo (1984:22) observes that by the late 1920s his

The combined effect of state policies, the expansion of commodity relations and the concomitant social differentiation undermined and disrupted whatever was left of traditional methods of social control. Up to the early 1920s the state was concerned with destroying traditional structures of social control and the capacity of the Shona and Ndebele to reproduce themselves outside capitalist relations of production. State policies and the teaching of missionaries complemented the impact of commodity relations in eroding traditional structures of social control (Phimister 1988a:146). Much to the misgivings of the settler state, new forces which expressed popular discontent stepped into the void created by the destruction of traditional structures of authority.

Popular discontent was expressed through a number of organisations which emerged in the 1920s to champion a variety of African interests (Ranger 1968b, Palmer 1977a, Phimister 1988a). These included the Ndebele Home Movement which campaigned for the restoration of the Ndebele kingship and the return of the land to the family of Lobengula; the Rhodesian Native Association which represented the interests of the advanced farmers of Mashonaland, the Rhodesian Bantu Voters Association which represented the interests of civilised Bantu of Matebeleland, and the Industrial and Commercial Union.

The economic recession of the late 1920s aggravated existing antagonisms and tensions between generations and social categories, and that self-defence prompted others to coalesce, thus providing the state with the building blocks of conservatism (Phimister 1988a:148). The groups which provided building blocks for the state included 'rich and middle peasants, increasingly Christian and 'modernizing', almost by definition male and middle-aged or elderly, and frequently including reconstituted chiefs and headmen ...' (Phimister 1988a:148). What brought them together was the threat of the loss of the labour of young men and women.

In response, the state attempted to invent traditionalism and tribalism.² It enacted the *Native Affairs Act* of 1927 which increased the powers of chiefs and headmen. Given

father had built a herd of about a thousand head of cattle, a couple thousand goats and a big herd of sheep. He employed a few young people to work for the family.

administrative practices which were designed to destroy traditional authority and to prevent the occurrence of resistance similar to that of 1896, the reconstituted traditionalism and tribalism bore little, if any, resemblance to pre-colonial forms. As Palley (1966: 479) correctly argues, the original policy was to replace the traditional system of rule by chiefs with direct rule of central government through Native Commissioners, leaving chiefs as minor administrative instruments of central government. From the outset, chiefs became minor state functionaries whose tenure was contingent upon good behaviour and general fitness. Moreover, the government carried out occasional reorganisation of chieftainships and reduced the number of chiefs. In the circumstances, the reconstituted traditionalism and tribalism was a purely colonial construction which was intended to neutralise political opposition.

The reconstituted traditionalism and tribalism did not extend to land allocation. In terms of the *Native Affairs Act* of 1927 the allocation of land continued to vest with the Native Commissioner. Chanock (1991:62) observes that colonial governments in Africa created chiefs whom they endowed with a set of powers quite different from those they had before colonisation. He adds that there is

a profound connection between the use of the chieftaincy as an institution of colonial government and the development of the customary law of tenure. The development of the concept of a leading customary role for chiefs with regard to the ownership and allocation of land was fundamental to the evolution of the paradigm of customary tenure.

While this was the case in those colonies where chiefs were used as agents of indirect rule, this was not the case in Southern Rhodesia. With the enactment of the Land Apportionment Act, the settler state was forced 'to implement land management and conservation policies which would underwrite the racial division of land ...' (Phimister 1988a:235). It introduced the policy of centralisation which entailed the division of land in the reserves into grazing and arable lands. Officials of the Native Affairs Department were responsible for the division of land into arable and grazing land.

Initially, the impact of centralisation on self-selection was limited. Ranger (1985:58-73) documents evidence which shows that a class of rich peasants emerged which cultivated more land and marketed more surplus than the average peasant. In response to the *Maize*

Control Act, rich peasants increased the amount of land they cultivated in order to maintain their incomes. Among other things, they benefited from 'communal tenure' which was convenient because it permitted them to plough as much land as they could. In Ranger's words:

They did not wish to *buy* land, even if they had been able to do so. They wished rather to take advantage of the system of communal tenure, which allocated land to those able to use it rather than to those who most needed it (1985:70).

In the late 1930s, rich peasants fell victim to the earnest implementation of the policy of centralisation. To the administration, the intensive 'master-farmer' applying new methods to a small amount of land became the model of a progressive farmer (Ranger 1985:70). Communal tenure, which had once benefited the rich peasantry, became their Achilles tendon. Since they did not own the land, they were very vulnerable to administrative intervention (Ranger 1985:70).⁸ Because the relationship between the state and the peasantry was administrative rather than legal in character, the state had powers to deal with land according to the dictates of administrative policy. The implementation of the policy of centralisation provides ample demonstration of the nature of the relationship.

The discriminatory marketing policies and centralisation occasioned untold hardships on most Africans and engendered opposition (Ranger 1985:74-5, Phimister 1988a:196-7). In response to the opposition, the state sought to strengthen the reconstituted traditionalism and tribalism. In 1937 it enacted the *Native Law and Courts Act* and the *Native Councils Act*. The former gave chiefs and headmen limited civil jurisdiction which, in the context of the policy of centralisation, did not extend to issues related to land. The latter was intended to strengthen the position of chiefs as against those of the emergent rural petty bourgeoisie. In the main, the membership of the Councils comprised chiefs and headmen appointed by the ubiquitous Native Commissioner. The Councils were also intended to exclude black voters from the common roll by providing them with an alternative outlet for their political aspirations (Phimister

⁸ In 1937 the *Letters Patent* was amended and the reserves vested in a Board of Trustees which exercised most of the powers previously exercised by the High Commissioner.

1988a:197). This appears to have been a belated and half-hearted attempt at some limited form of indirect rule.

For the proletarianised Africans, the Depression occasioned loss of work and a reduction in wages for those who were fortunate to retain their jobs. Poor peasants found it increasingly difficult to reproduce themselves through agricultural production and hence were forced into wage labour. The Depression occasioned hardships for women, some of whom were proletarianised. For the majority of women, colonisation exacerbated their subordinate position in the division of labour. 'Customary' legal forms denied them rights over land. They could only gain access to land as labour recruited through marriage. Under colonialism, their subordinate position within the household relations of production and division of labour was translated into one of legal minority. The experiences of women were not uniform and were mediated through class positions. Some escaped the demands of reconstituted patriarchy. Poor peasant women were either exploited to produce for the market or forced to take on additional labour burdens as their husbands were forced into migrant labour. While rich peasant women initially escaped the additional labour burdens occasioned by commodity production, the Depression imposed additional labour demands on them as households struggled to reproduce themselves under difficult conditions (Phimister 1988a:203-6).

2.2.3 Industrialisation 1940-1965.

The most significant development during this period was the development of secondary industry and the concomitant changes in the balance of class forces and state policy. The outbreak of the Second World War led to a fall in imports from imperialist countries (Phimister 1988a:251). In the circumstances, local substitutes had to be found and the government adopted interventionist policies to assist industry to produce the substitutes. During the 1940s, industrial expansion was phenomenal and two main factors contributed to the growth. First, the elimination of foreign competition during the war gave local industry sufficient space within which to grow. Second, the expansion of the domestic market contributed to the growth. Growth was, however, retarded by a balance of payment crisis

towards the end of the 1940s. A customs agreement with South Africa in 1955 and the establishment of the Federation brought about a measure of recovery (Phimister 1993:231).

While secondary industry enjoyed a phenomenal expansion, mining industry experienced a decline which was reflected in the fall of its contribution to national income. In contrast to mining industry, the contribution of settler agriculture to national income grew at a phenomenal rate. It should, however, be pointed out that the growth in settler agriculture was confined to tobacco (Arrighi 1973b:354-5). Because of the profitability of tobacco farming, many farmers switched over to it with the result that the country lost its self-sufficiency in food production. Since the marketing system had been established to deal with a situation of surplus production, it was necessary to re-orient the functions of the control boards. Existing control boards were thus converted into marketing boards to oversee the supply and distribution of agricultural produce. As a result of food shortages which occurred during the war, the government introduced price controls to avoid inflation. Producers were, however, paid guaranteed prices (Murray 1970:102-3).

The good fortunes of tobacco growers were not enjoyed by maize and beef producers. State assistance was, however, not forthcoming to maize and beef farmers because of a shift in the balance of economic and political power (Phimister 1988a:234). The decline in the economic significance of maize growing and cattle ranching brought with it a corresponding decline in the political significance of settler farmers. In the circumstances, the state focused on secondary industry and reassessed the surplus production capabilities of the peasantry. The growth of secondary industry generated an increased demand for stabilized labour and a wider and deeper internal market. Due to the failure of settler agriculture to satisfy the food requirements of the local market and the consequent shortage of food during the war, the state turned to peasant agriculture which, under the circumstances, was no longer in competition with settler agriculture. After years of neglect and marginalisation, peasant production was not in a state to meet the shortfall. Conditions in the reserves were in a sorry state of affairs.

A number of measures were adopted which were designed to improve the productivity of peasant agriculture. In 1944 the Godlonton Commission on Native Production and Trade reported that the fragmentation of arable land and the overstocking of grazing land was

causing damage to resources (Hailey 1957:766). It recommended authoritarian measures to deal with the crisis. It also recommended the registration of land rights in the names of individuals as a way of enforcing good husbandry. The recommendations of the Commission were accepted by the government and soon found their way into the statute books. In 1948 the *Native Production and Marketing Act* was enacted and it sought to improve farming methods in order to secure increased agricultural production. It also attempted to achieve the same purpose through improved marketing facilities. Hence compulsory marketing at fixed prices was extended to cover all important African grown crops (Phimister 1988a:237). A *Native Development Act* was also enacted in 1948. It imposed levies on African produce and the funds collected were to be used to develop African agriculture. Authoritarian provisions of the *Natural Resources Act* were employed to enforce destocking measures and to impose methods of production. African producers were forced to sell their cattle at arbitrary prices in order to avoid compulsory destocking measures which the state threatened to invoke (Phimister 1988a:237-8).

When the above measures failed to solve the problem of overcrowding, the state was forced to consider a final solution which would cut the nexus between peasant farming and wage labour. The proposed solution involved replacing the right of access to land on the basis of 'customary tenure' with a final allocation of land to the peasantry. The proposals envisaged a departure from the two-pyramids segregationist ideology of the 1930s and an attempt to integrate Africans into the economy. In the context of a growing secondary industry, the government was confident that those who would be left out when the final allocation of land was made would be absorbed as semi-skilled workers by industry. The final solution was enacted into the *Native Land Husbandry Act* of 1951.

The general view is that the Act represented a compromise between the interests of secondary industry which needed a stabilised labour force that would also provide a market on one hand, and the interests of the agrarian bourgeoisie who wanted cheap unskilled labour and the restriction of African competition (Arrighi 1973b:362). Phimister (1993:232) questions this conventional wisdom. He suggests that by 1951 when the Act was enacted, the capacity of secondary industry to absorb displaced Africans was no longer taken for granted because its

limitations had already been demonstrated by the balance of payments crisis which had been experienced towards the end of the 1940s. He further suggests that the compromise which the Act 'may have embodied was less that between industry and settler agriculture, than one determined by the limitations of import substitution industrialisation'.

According to Arrighi (1973b:352-374) industrialisation created a conscious African proletariat which made demands for improvements in its conditions of work. It also created a manufacturing sector which increasingly came to be dominated by international capital and which preferred the creation of an African middle class and bourgeoisie as a bulwark against the growing African proletariat. This involved the removal of restrictions on competition between whites and blacks. There was thus a coincidence of interests between manufacturing capital on one hand, and the African middle class and bourgeoisie on the other. These interests conflicted with the interests of the agrarian bourgeoisie and the white working class. Since the centre of gravity had shifted away from the agrarian bourgeoisie and its allies, in the 1950s the government implemented policies in favour of the interests of international capital and the African middle class and bourgeoisie. The reforms, however, failed 'because they set up "centrifugal reactions" which culminated in the seizure of power by workers, the *national* agrarian capitalists and petty bourgeoisie, who all rallied around the Rhodesian Front Party' (Arrighi 1973b:164).

The critical issue which eventually precipitated the unilateral declaration of independence was how to respond to African nationalism. The party in government, the United Federal Party, favoured the promotion of the growth of an African middle class while the Dominion Party (later renamed the Rhodesian Front) favoured the maintenance of permanent and absolute power (Astrow 1983:12). Britain on the other hand gave support for a token, slow and gradual move to majority rule as reflected by the franchise arrangements of the 1961 Constitution. In a referendum, the settlers voted by a majority of two to one in favour of the Constitution. Astrow (1983:12) suggests that the vote did not reflect support for a multiracial society, but rather a determination to become fully independent. In an attempt to win the support of the African middle class in the 1962 elections, the United Federal Party proposed the repeal of the *Land Apportionment Act*. For the majority of settlers, the Act was a

symbol of white domination and its repeal represented loss of power. The majority voted for the Dominion Party which opposed the repeal. The government declared independence from Britain in 1965.

2.2.4 The Native Land Husbandry Act and African Resistance.

The circumstances surrounding the enactment of the Act have already been discussed. The philosophy behind the Act was that communal tenure led to misuse of land and that the security of individual land tenure would give Africans the incentives to adopt good land husbandry and to maximise production. Peasants were required to have a permit to cultivate land called a 'farming right' and a permit to graze livestock called a 'grazing right'. The Act made it illegal for anyone to grow crops or to graze livestock without a permit. Native Commissioners were given power to allot to each peasant an area equal to the standard area established in terms of the Act.

The size of an cultivated unit could not be reduced below the standard area. Subject to the consent of the Native Commissioner, holders of permits could transfer them to other holders. The size of land that a permit holder was entitled to hold was limited to twice the size of the standard allocation. Farming and grazing rights expired on the death of the holder and they could not be disposed of by will. An important point worth noting is that the Act made provision for the allocation of farming and grazing rights to widows, married women whose husbands' whereabouts were unknown or whose husbands were living outside the colony, female divorcees who had been granted the custody of their dependent children, and spinsters apparently over the age of twenty-five years.

The implementation of the Act was slow as a result of a number of factors. It engendered African opposition which was translated into nationalist politics of the 1950s and early 1960s. Organisations such as the African Voice Association, the Youth League, and political parties such as the African National Congress and the United Democratic Party, mobilised opposition to the Act. Implementation was also slow because of poor planning.

Problems of implementation were exacerbated by the expulsion of about 110 000 Africans from European areas between 1950 and 1960. A boom in post-war European immigration combined with the growing export market for tobacco led to the expulsion of many Africans living in European areas. It is estimated that by 1959, there was no land for 30% of Africans who were entitled to it (Yudelman 1964:123). The implementation of the Act was eventually suspended in 1961. At the time of suspension, the Act had only been implemented in 42% of the reserves (Phimister 1993:236).

The implementation of the Act did not eliminate social differentiation which was already underway. At the end of the 1940s, an estimated 30% of the peasantry farmed 52% of cultivated land in the reserves (Phimister 1993:234). In the 1959/60 season, that is just before the implementation of the Act was suspended, 30% of the reserve producers were cultivating 63% of the land (Phimister 1993:237). Phimister suggests that rich peasants were alienated by the attempts of the settler state to restrict their capacity to accumulate, and that they embraced nationalist politics and assumed leadership positions in branches of the African National Congress and the National Democratic Party (Phimister 1993:239).

In those areas where the Act had been implemented, a market for grazing and farming rights developed. Holleman (1969:333) suggests that by 1963, 7000 transfers had been made of cultivating rights and 19 000 of grazing rights. The average selling price for a grazing right was £5 per acre, with provincial averages ranging from £4 to £10, while grazing rights sold for an average of £5.10, with provincial averages ranging from £4.76 to £12 (Holleman 1969:334). As will be recalled, the Act made provision for the allocation of land to certain categories of women. There is fragmentary evidence which suggests that in cases where marginalised women were granted land rights, they subsequently co-operated with the state (Weinrich cited in Phimister 1993:232). As Phimister (1993:233) argues, the extent of the co-operation and its impact on opposition to the Act remain unknown.

2.3 UDI 1965-1979.

2.3.1 Back to the Past.

After UDI, the British government imposed sanctions on Rhodesia which involved the stoppage of trade, the blocking of funds and the prohibition of foreign currency transfers. Following the Rhodesian rejection of the *Tiger* proposals of 1966, Britain agreed to a United Nations mandatory sanctions which covered major Rhodesian imports and exports. In May 1968, the United Nations passed Resolution 253 which broadened the scope of mandatory sanctions and established the Sanctions Committee to administer the implementation of the Resolution. The impact of sanctions was, however, limited by a number of factors. First, there was a lapse of over two years before mandatory sanctions were imposed. The Rhodesian government was thus given time to make plans for their evasion. South Africa and Portugal refused to impose sanctions, and also exported and imported goods for the Rhodesians. Sanctions contributed to the growth of secondary industry in Rhodesia because they cushioned it from outside competition and thus allowed it to manufacture substitutes without outside competition.

Between 1968, when mandatory sanctions were imposed, and 1974, the Rhodesian economy experienced a period of growth as a result of import substitution industrialisation. Most of the import substitution industrialisation was directed towards the production of consumer goods, while production for export was directed towards processing industries for minerals and agricultural products (Zimbabwe 1986a:6). The significant features of import substitution industrial development were the growth of industries processing mining and agricultural products and industries producing for a domestic market. Thus, under import substitution industrialisation, mining and agriculture were integrated with secondary industry. From 1975 to 1979 the economy declined as a result of the international economic crisis and the escalation of war (Astrow 1983:57).

By 1969 the settlers were confident about the prospects of success of UDI. In that year the Rhodesian government introduced a republican constitution which was predicated on a philosophy of separate racial development. In terms of the constitution, black majority rule was foreclosed. In the spirit of racial segregation which characterised the age, the government

introduced the *Land Tenure Act* of 1969 which repealed the *Land Apportionment Act*. The Act divided land into European, African and National land. European and African land comprised 45 000 000 acres each while 6 500 000 acres made up National land. The Act made provision for the transfer and exchange of land between European and African areas. It prohibited any variation in the size of European and African land which exceeded two percent. It also provided for the establishment of boards of trustees for both European and African areas which were to hold powers of trusteeship for both communities. The principle of a board of trustees was borrowed from the 1961 Constitution which established a board of trustees responsible for tribal trust lands, the former native reserves. The boards were to have a common chairman who was to be the Chief Justice or any judge of the High Court and they were tasked with ensuring that the two percent variation was not exceeded.

The Act entrenched segregation by providing security of tenure for each race in its designated area. Europeans could, however, own land in African areas under strictly defined circumstances and *vice versa*. Europeans and Africans could acquire residential accommodation in a non-racial residential area or township especially set aside for Europeans in the African area or for Africans in the European area. While Europeans had freehold tenure over land they owned, African land vested in the President who was responsible for ensuring that tribal trust land was used and occupied solely and exclusively by tribesmen.

The occupation and use of land in the tribal trust lands vested with tribal land authorities which were first established by the *Tribal Trust Land Act* of 1967 and were retained under the *Land Tenure Act*. The authorities comprised the chief of the area and other tribesmen nominated by the chief in accordance with 'tribal custom'. This was a classical case of inventing tribal custom. In terms of the *Tribal Trust Land Act*, allocations of land made in terms of the *Native Land Husbandry Act* were to be maintained if the beneficiaries so wished. The *Land Tenure Act* on the other hand made provision for the President to convert tribal trust land to freehold title after making consultations with the chief or other authority concerned and after satisfying himself that it was the general wish of the tribesmen to have the land converted. In granting freehold title, the President could impose limitations regarding the

future alienation or disposal of the land in question. The provisions of the two statutes could only have contributed to the confusion surrounding the nature of land tenure for the peasantry.

As a result of the war of liberation, the Rhodesian government enacted the *Land Tenure Amendment Act* of 1977 which removed the racial division of land. With the intensification of the war, the beleaguered Rhodesian government sought to buy the support of moderate Africans by pretending that one of the pillars of segregation policy had been abandoned. In 1978 it reached a dubious agreement with moderate African leaders which purported to transfer power to blacks. Following the agreement, elections were held in 1979 and won by Bishop Abel Muzorewa's United African Congress party and the country became known as Zimbabwe-Rhodesia. After elections the *Land Tenure Act* was repealed. Many black politicians and businessmen were able to acquire land following the repeal of the Act (Moyo 1994). A *Tribal Trust Land Act* was enacted to regulate land in the tribal trust lands. The government published a rural development plan which admitted that the Tribal Trust lands were overcrowded. The plan proposed the acquisition of land from the agrarian bourgeoisie for an organised intensive resettlement of the peasantry.

Between 1965 and 1979, the agricultural policy of the Rhodesian government was dictated by the need to minimise the impact of economic sanctions. Mumbengegwi (1986:204) suggests that four major objectives were pursued during this period. They were the stimulation of growth in agricultural output; the attainment of self-sufficiency especially in food production and raw materials; the diversification in the structure of output of the sector; and the maximisation of foreign exchange earnings. The above objectives were achieved through pricing and marketing policies, subsidies, favourable credit facilities, and the availability of cheap labour. Marketing boards created in the 1930s and 1940s were strengthened. In 1967 the Agricultural Marketing Authority was established as an umbrella body responsible for the activities of the statutory boards. A peculiar feature of the marketing boards was that they absorbed the losses on the trading account and did not appropriate any surplus which arose from their activities (Mumbengegwi 1986:205).

Subsidies played an important role in keeping settler agriculture afloat during the UDI period. Between 1974 and 1978 the government paid settler agriculture £87 million in

subsidies, losses and assistance (Riddell 1980:5). Settler agriculture received indirect subsidies in the form of low wages paid to African workers (Riddell 1980:6). While agriculture accounted for 33% of formal employment, its wage bill amounted to .6% of the national total, and its earnings amounted to 25% of national earnings (Mumbengegwi 1986:206).

As a result of sanctions and the loss of markets, the government adopted measures which were designed to shift production away from tobacco, the biggest foreign exchange earner before sanctions were imposed. Other measures were adopted to improve food self-sufficiency in an attempt to reduce imports (Mumbengegwi 1986:207). Consequently, at independence settler agriculture was responsible for 90% of marketed output, contributed 19% to domestic product and was second to manufacturing, and employed 40% of the employees which was more than twice any other sector in the economy (Riddell 1980:4). The country was self-sufficient in food production, with 70% of it coming from settler agriculture. Most of agricultural produce was, however, exported. These exports contributed 37% of the country's foreign exchange earnings. In addition, between a third and a half of raw materials used in the manufacturing industry originated from settler agriculture (Riddell 1980:4). The above impressive figures only tell part of the story. Riddell (1980:4) argues that in 1976, 28% of all European farms covered 77% of all European farming land and were responsible for 79% of total production. In the same year, 60% paid no income tax and 27% of all farms contributed 95% of all taxes paid by the farming sector. He suggests that by 1978-9 an estimated 40% to 60% of European land was under-utilised.

2.3.2 Repression and Resistance.

The settler forces that took over power after the 1962 elections were committed to maintaining white privilege and the suppression of African opposition. In 1964 the Rhodesian state arrested or imposed restrictions on most leaders of ZANU and ZAPU, the two nationalist parties. Those who escaped arrest went into exile and embarked on armed resistance initially from Zambia and latter on from Mozambique. The strategy of the 1960s was to use violence in

order to pressurise Britain into intervention that would bring about independence (Mandaza 1986:29. By the late 1970s, the armed struggle was at best seen

as a means to dismantle the white settler colonial system and replace it with an African government and, at worst, as a pronounced way of pressurising the imperialists into convening a conference that would bring about an African government in Zimbabwe (Mandaza 1986:29).

Thus from the early 1970s the liberation struggle was intensified.

UDI, sanctions and the liberation struggle wreaked havoc on the lives of the peasantry. Phimister (1988b:8) observes that the burden of white survival in the countryside after UDI was carried by black peasants, while Astrow (1983:64) observes that while Europeans adopted measures to protect their privileged positions, blacks were faced with the disastrous consequences of the disintegration of agriculture and industry. When settler agriculture lost its external markets following UDI, it turned to domestic markets thus pushing peasant agriculture from the precarious position it had occupied since the 1940s. For example, settler agriculture increased its share of the domestic food market from 30% in the early 1960s to 75% in 1979 (Phimister 1988b:8).

For the poor peasants, the war and sanctions further exacerbated their already untenable position. The capacity of rich peasants and the Purchase Area petty bourgeoisie to accumulate was reduced. It is estimated that the number of landless people increased from 30% in the late 1950s to under 50% in 1978. Middle peasants and the Purchase Area petty bourgeoisie were, however, able to increase their land holdings (Phimister 1988b:9). Combined with the above economic grievances, political repression which the settler state adopted in response to the escalation of the liberation struggle gave the peasantry many reasons for supporting the war. About three-quarters of a million people were thrown into what were euphemistically termed 'protected villages', thus disrupting agricultural production.

As with most guerrilla wars, the Zimbabwean liberation struggle was rural in character. It therefore had a strong impact on local administration in the rural areas. Guerrilla forces mobilised and politicised the peasantry and, in some cases, created alternative structures to those which had been established by the colonial state (Cliffe et al 1980). While Ranger (1985) argues that the peasantry collaborated with the guerrilla forces because of their grievances

over land, Kriger (1988) suggests that the relationship was characterised by a combination of voluntary co-operation and violence. Whatever the case, the creation of alternative structures marginalised chiefs who had been given enhanced powers by the colonial state.

Recent historiography suggests that while the peasantry were united in their support for the war, different class interests among them and within the liberation movement as a whole began to emerge in the 1970s (Phimister 1988b:12). The liberation struggle brought gender, lineage and generational struggles to the fore (Kriger 1988). Phimister (1988b:12) suggests that the 'involvement of landless young men, of women of all ages, and poor peasants in ways that were not totally passive, sharpened contradictions within the broad liberation movement'. While rich peasants and petty bourgeois farmers were attacked by poor peasants and the guerrillas, 'the language and practice of class war remained largely subordinate to the discourse and interests of radical nationalism' (Phimister 1988b:13). And radical nationalism was only interested in political change rather than social change, in democratising rather than transforming the existing social structures, and in land distribution rather than the expropriation of the expropriators (Phimister 1988b:13). The victors in the struggle in the shadows were not the poor peasantry and the majority of the guerrillas. The incipient class war was lost and radical nationalism emerged victorious.

Conclusion.

By the end of the colonial era Zimbabwe had an agrarian structure consisting of settler agriculture which enjoyed a lot of state support and was predicated upon a freehold land tenure system; peasant agriculture which had been marginalised and discriminated against throughout the colonial period and which was supposedly predicated upon customary tenure; and small scale African capitalist agriculture which was predicated upon a leasehold/permit land holding system. Peasant agriculture was closely linked with migrant wage labour in the sense that remittances from wage labour were essential for the reproduction of many peasant households. Conversely, the labour power of migrant labour was purchased below its value because some of the reproduction needs of worker-peasant households were met through

peasant agriculture. Wage labour remittances were, however, important for investments in rich peasant households.

Colonialism was brought to an end as a result of anti-colonial struggles for self-determination. Decolonisation struggles centred on attempts to transform and democratise the discriminatory, authoritarian and exploitative colonial social relations. The transformation of the colonial agrarian structure featured prominently in nationalist struggles for self-determination. Since the agrarian question was central to struggles for self-determination, it was bound to feature prominently in the negotiations for the transfer of state power at the end of the colonial era. Given the significance of the transfer of power, the next chapter analyses the making of the independence constitution and its implications for democratisation in general and the transformation of the agrarian structure in particular.

CHAPTER 3.

THE CONSTITUTIONAL FRAMEWORK 1980-1990.

Introduction.

The last chapter examined the origins and development of the agrarian question during the colonial era. At the end of the colonial period in 1980, the agrarian question comprised the land and peasant questions. In response to pressure from the war of liberation, and in an attempt to buy the support of moderate blacks, the colonial state formally removed racial discrimination in the acquisition and ownership of land. While the war exacerbated the oppressive relations between the state and the peasantry, it also forced the colonial state to retreat from the rural areas thus giving the peasantry political space. This was the state of the agrarian question in 1979.

At the end of the colonial period, the direction which agrarian reform would take in the post-colonial era depended, to a large extent, on the nature of the decolonisation process and the consequent transfer of state power. The culmination of the decolonisation process was the making of the independence constitution which institutionalised the transfer of state power. This chapter examines the constitution making process and the implications of the independence constitution for agrarian reform. It gives a background to the various failed attempts at decolonisation and analyses the reasons for the success of the Lancaster House Conference. It shows that the constitution which was finally agreed upon at the Lancaster House Conference did not depart from earlier Anglo-American proposals. The chapter argues that the Anglo-American proposals and by implication, the Lancaster House Constitution, were designed to foreclose the radical transformation of the colonial political economy.

In addition, the chapter examines the controversial features of the Constitution such as the provisions regarding racial representation and the protection of private property. It shows that the British proposals which were finally accepted by the parties foreclosed agrarian reforms which would transform the colonial agrarian structure. It also shows that the Patriotic Front (PF) proposals were too open-ended and would have given too much discretionary power to the state. The chapter also makes comparisons between the Lancaster House

Constitution on one hand, and the constitutions of Namibia and South Africa on the other, and shows that the latter two made provision for agrarian reform programmes. It argues that the British were concerned with protecting the *status quo* rather than the redress of colonial injustices and inequalities. Finally, the chapter examines the provisions which ensured that the colonial legal order and the apparatus of the state were inherited intact.

3.1 Background to the Lancaster House Agreement

3.1.1 The Anglo-American Proposals

The Lancaster House Agreement was the culmination of several failed attempts at decolonisation. In the mid-1960s and early 1970s Britain made half-hearted attempts to reach a settlement with the illegal Rhodesian government which would make provision for majority rule at some future date.¹ Likewise, the United States adopted the attitude of condemning the illegal settler regime while doing business with it (Stoneman and Cliffe 1989).² According to Stoneman and Cliffe (1989:29) the 'relative unconcern shifted rapidly from 1974 with the coup in Portugal and the resulting independence of Mozambique and Angola, coupled with the stepping up of the intensity of the struggle in Zimbabwe itself'. Thereafter Britain and the United States sought to protect imperialist interests by ensuring that post-independence state power would not end up in the hands of radical left-wing parties as was the case in Angola and Mozambique.

Following the change of attitude, in 1976 the British Prime Minister, Callaghan, proposed a target of two years for majority rule which was adopted by the United States (Astrow 1983). Kissinger, the US Secretary of State, engaged in a process of shuttle diplomacy involving South Africa and the Frontline states³ which was intended to create conditions conducive to majority rule. Under pressure from South Africa, Smith accepted the

¹ The British Government made proposals for majority rule to Ian Smith at the Tiger and Fearless talks of 1966 and 1968 respectively. Both were unsuccessful.

² See also El-Khawas and Cohen (1976:39).

³ The Frontline states comprised Botswana, Tanzania, Zambia, Mozambique and Angola.

Kissinger proposals and committed himself to majority rule within two years.⁴ Kissinger proposed a transitional government with a Council of State made up of an equal number of blacks and whites to be chaired by a white; a Council of Ministers, with a black Prime Minister and a majority of black Ministers; law and order were to remain in white hands; sanctions were to be lifted; and the establishment of a large Zimbabwe Development Fund. The duration of the transitional period was to be two years (Astrow 1983). Astrow (1983:101) argues that Smith accepted the Kissinger proposals because the transitional period of two years would have given the Rhodesians time to recover from the economic and military pressures occasioned by the war.

The Kissinger proposals were rejected by the Frontline states but formed the basis of the Geneva Conference of 1976. The Conference failed because the parties failed to reach a consensus. Undeterred by the failure of the Geneva Conference, Britain and the US continued to press for a settlement. Their next attempt was the Anglo-American initiatives of 1977 which amended the Kissinger proposals by suggesting the appointment of a British Resident Commissioner with full executive and legislative powers. The idea of a transitional government with whites remaining in control of law and order was retained. So was the proposal relating to the establishment of a Zimbabwe Development Fund of US\$1,5 billion. In addition, a Bill of Rights including, *inter alia*, the protection of private property from deprivation except under stipulated grounds of public interest, and subject to the payment of prompt and adequate compensation which was to be remittable abroad, was introduced. As Stoneman and Cliffe (1989:30) argue, the Anglo-American proposals were predicated upon

a constitution plus social and economic structures that would preserve some status and/or compensation for white settler interests, but more especially for foreign capital and property, and would in fact thus preserve capitalist property relations even if the racial exclusivity of capital was eliminated.

While the general approach was acceptable to the PF, it objected to the "continuation of European domination during the transitional period. The settlers for their part opposed the

⁴ In an interview with M. Charlton, Smith argued that the Rhodesians accepted the principle of majority rule because of pressure from South Africa (Charlton 1990:2).

proposals because they did not go far enough in preserving white privileges (Astrow 1983). The proposals were therefore rejected by both groups.

The Anglo-American initiative was further discussed at the Malta talks of 1978 at which the PF accepted the holding of free elections under impartial supervision and the establishment of a transitional period during which a British High Commissioner would rule. The United Nations would have a role to play in the transitional period. The PF objected to British and US proposals for an advisory Council which would include a British Governor, a UN representative, and two members each from the Rhodesia Front, United African National Congress, ZANU (Sithole)⁵, ZAPU and ZANU. The proposals were unacceptable to the PF because it would have been in a minority in the advisory Council (Astrow 1983). Further attempts at reaching a settlement were made in Dar es Salaam in 1978. The PF agreed to give full executive authority for defence and law and order to the British Commissioner, and accepted the proposal for a UN peace-keeping force to ensure free and fair elections.

3.1.2 The Road to Lancaster House

Meanwhile, after the collapse of the Geneva Conference, Smith, having accepted the principle of majority rule, decided to negotiate an internal settlement with moderate nationalist leaders. A number of leaders who had been marginalised in the course of the struggle were willing to do business with Smith. These were Ndabaningi Sithole, the founder President of ZANU who had been ousted from power and had returned from exile in 1977 arguing that he was now opposed to violence and was prepared to negotiate a settlement with Smith; Bishop Abel Muzorewa who had risen to prominence when he led the opposition to the Pearce Commission's proposals;⁶ and Chief Jeremiah Chirau.

⁵ The UANC and ZANU(S) were moderate nationalist parties which had already indicated their willingness to compromise and work with Smith and his RF.

⁶ The Pearce Commission was set up in 1972 to inquire into whether there was support for British proposals for a settlement with African chiefs. Muzorewa, by his own admission, was invited to lead the opposition to the inquiry and when the Commission's work was completed, his 'only platform had gone' (Interview with Charlton 1990:83).

The internal settlement was duly signed on March 3, 1978. It made provision for 28 reserved seats for whites in the legislative assembly to be entrenched for ten years or two parliaments whichever was longer; protection of private property rights; the retention of the police and security forces and the independence of the judiciary. The above provisions were to be entrenched in the Constitution, and could only be amended with the support of no less than 78 members in the 100 member legislative assembly, thus giving the 28 white members an effective veto. The internal settlement also provided for the establishment of a transitional administration which was tasked with the drafting of a constitution to provide for majority rule based on universal adult suffrage. The new constitution was to come into force on independence day after elections. Boycotted by ZANU and ZAPU, the elections were duly held in April 1979 and were won by Muzorewa who assumed the office of Prime Minister of the Republic of Zimbabwe Rhodesia on 1 June 1979. By appearing to surrender power to a black majority, the Rhodesian regime hoped to gain international recognition and to have the international sanctions lifted (Gregory 1980). International support was not forthcoming largely because the elections had been boycotted by ZANU and ZAPU. Smith argues that he entered into the internal settlement at the 'request of our friends in Britain, who told me that this was the best way of getting a solution' (Charlton 1990:88). Furthermore, the regime and its allies hoped that a government led by a black man would be able to stop the war. Muzorewa's call to the PF's guerrillas to surrender was unsuccessful. Instead, the internal settlement led to the intensification of the war.

Meanwhile, the Conservative Party had won the 1979 British elections and one of its pre-election undertakings was to recognise Muzorewa's government following a report by Lord Boyd that the April elections had been free and fair (Gregory 1980).⁷ Once in power, however, the Conservatives met with strong opposition to recognition both at home and abroad. At home there was opposition from the Labour Party as well as from within the Conservative Party itself.⁸ Despite pressure from the right-wing of the Conservative Party

⁷ Charlton (1990) provides a very comprehensive account of developments leading to the Lancaster House Conference and the Conference itself.

⁸ See for example debates in the House of Commons on the 10th of July, 1979, Parliamentary Debates, Volume 790, Columns 263 to 274.

which argued that the internal settlement met the six principles which successive British governments had laid down as providing the framework for majority rule, recognition was withheld.⁹ Internationally, Mrs Thatcher's statement in Canberra that Britain would recognise Muzorewa's government sparked opposition from a number of Commonwealth countries. The United States remained committed to the Anglo-American proposals (Gregory 1980). Under the circumstances, the British government withheld recognition.

One of the reasons why Britain withheld recognition was because of potential opposition at the forthcoming Commonwealth Heads of Government Summit in Lusaka. Britain was forced to modify her position and to commit herself to genuine black majority rule in Zimbabwe. The British government acknowledged the need for a solution which would involve all the parties concerned (Charlton 1990). This was acceptable to the Commonwealth leaders gathered in Lusaka and to the Frontline states. As a result, the Lusaka Summit agreed to a constitutional conference involving all the parties to the Zimbabwean dispute. A communique issued at the end of the Summit provided a framework for the Lancaster House Conference. Essentially, the communiqué recognised that enduring peace would only ensue from the attainment of black majority rule based on a democratic constitution. Britain was recognised as the legitimate authority to convene a constitutional conference, and to supervise the transition to independence including the holding of free and fair elections.

The Lancaster House Peace Conference succeeded where other attempts had failed for a number of reasons. First, Britain and the US were determined to find a settlement that would not jeopardise regional stability. Second, the abortive internal settlement had failed to achieve its intended goals of winning international recognition and the lifting of sanctions. It had failed, moreover, to stop the war. Since the economy could hardly sustain the war effort, the settlers and their allies were thus forced to negotiate. Third, the PF, which was opposed to a constitutional conference, came under intense pressure from the Frontline states to agree to a settlement (Astrow 1983, Mandaza 1986, Stoneman and Cliffe 1989).¹⁰ Botswana,

⁹ See interviews with Julian Amory in Charlton (1990).

¹⁰ The extent of the pressure which the Frontline states brought to bear on the Patriotic Front is given by Nkomo in his autobiography (1984) and Charlton in his interviews with Nkomo, Mugabe, Kaunda and Chisano (1990).

Mozambique and Zambia suffered from Rhodesian military incursions which undermined their economic and political stability. Under the circumstances, the Frontline states were eager for a settlement and pressurised the PF to reach an agreement. Finally, South Africa, which had been underwriting the war both financially and militarily, was no longer prepared to continue providing assistance (Astrow 1983, Stoneman and Cliffe 1989). South Africa's involvement in the Angolan and Rhodesian wars strained its resources. Hence it brought pressure to bear on the Zimbabwe Rhodesian government to compromise. A combination of the above factors paved the way for the success of the Lancaster House Agreement. All that remained was for Britain to take the initiative to convene a conference of all the parties involved.

3.2 The Lancaster Constitution.

3.2.1 Constitutional Proposals.

The Lancaster House Conference commenced on 10 September and ended on 15 December 1979 and was chaired by Lord Carrington, the British Foreign and Commonwealth Secretary.¹¹ The Conference focused on three issues: arrangements for a cease-fire, a constitution, and the holding of elections. While acknowledging the importance of the other two issues, this chapter is mainly concerned with the constitutional framework which was agreed upon at the Lancaster House Conference.¹²

Writing about independence constitutions which colonial powers bequeathed to their former colonies, Ghai (1993:51) observes that:

Constitutions were frequently burdened with the settlement of all kinds of social, political, ethnic and economic problems whose settlement became the *sine qua non* for the granting of independence.

¹¹ Nkomo (1984:194) observes that Lord Carrington 'had the usual links with old style imperialism in southern Africa, through his past directorship of the vast multinational company, Rio Tinto Zinc'.

¹² The terms of the cease-fire agreement and the transitional arrangements testify to the pressure that the Patriotic Front was operating under. The cease-fire agreement required the Patriotic Front armies to withdraw to assembly points while the Rhodesian army was under no such obligation.

The above observation correctly captures British objectives at the Lancaster House Conference. By 1979, the British were past masters at decolonisation. They already had more than two decades of decolonisation experience in Africa during which they had developed the Westminster constitutional model which they bequeathed to their former colonies. Having assumed full colonial powers which she had not enjoyed in the past, Britain was not about to depart from her tried model which had ensured neo-colonial transitions in her other former colonies.

Because of the large settler presence, Zimbabwe, like Kenya, posed additional problems to the decolonisation process. In the case of Zimbabwe, the Westminster constitutional model had to be burdened with the additional problems arising from the relatively large settler population which had never been directly ruled by Britain but which had served as an imperialist link. The British were only prepared to hand over political power to black nationalists subject to guarantees for white settlers (Mandaza 1986:34). This is reflected in the six principles of 1966 which formed the basis of British decolonisation initiatives. The principles were reiterated by Lord Carrington in his opening speech at the Lancaster House Conference. They were that:

1. majority rule must be maintained and guaranteed;
2. there must be guarantees against retrogressive amendments to the constitution;
3. there should be immediate improvements in the political status of the African population;
4. racial discrimination is unacceptable;
5. regardless of race, there is no oppression of the majority by the minority or of the minority by the majority; and
6. any basis proposed for independence must be shown to be acceptable to the people of Rhodesia (Baumhogger 1984:1048).¹³

The principles formed the basis of British constitutional proposals. At the heart of the British proposals was the concept of liberal constitutionalism which according to Shivji (1991:28) 'rests on two main pillars- limited government and individual rights'. As Murphy (1993:3) argues, liberal constitutionalism is predicated on the belief that government 'must be

¹³ Mandaza (1986:34) observes that the principles said more about the priority that Britain placed on the white minority. This is hardly surprising given the reciprocity of interest that imperialism had with the white minority.

hedged in by substantive limits on what it can do, even when perfectly mirroring the popular will'. Constitutionalism imposes certain broad requirements

such as limited government, adherence to the rule of law, protection of fundamental interests, and compliance with the demands of abstract equality - that are bound to circumscribe the number of possible legitimate orderings of relevant identities (Rosenfeld 1994:14).

The Muzorewa delegation did not have any fundamental problems with the six principles. They sought to use the Conference to convince the British that the internal settlement satisfied the six principles and therefore that they deserved recognition.

In contrast to the six principles, Joshua Nkomo, in his opening speech on behalf of the Patriotic Front, argued that Zimbabwe must be a sovereign republic in which the sovereign nation pursues its own destiny, totally unshackled by any fetters or constraints; that the sovereign Zimbabwean people must, acting through their own freely chosen representatives in parliament, be free and fully vested with the power to exercise complete dominion over resources from time to time as need arises; that they must be free to reorganise the social, political and economic institutions and structures and be free to shape their own destiny as a nation without having to pander to any racial, ethnic, tribal, religious, social or other interests or differences (Baumhogger 1984:1050).

Thus from the outset, there were fundamental differences between the British and the PF on the principles which would inform the constitutional making process. It would appear that while the British approach was based on the proscription of the power of the state, the PF's approach was based on the idea of the unrestricted exercise of popular sovereignty and the right of the majority to transform society. The main differences that were to emerge during the conference were on the issues of the protection of private property from compulsory acquisition, citizenship, the character of the presidency and reserved seats for whites.

In the course of the Conference, pressure from the Frontline states forced the PF to make concessions on all the issues and eventually accepted the British proposals.¹⁴ While the

¹⁴ As argued on page 76, the PF came under intense pressure from the Frontline States which were themselves under intense pressure from the Rhodesians. For example, Rhodesian security forces attacked guerrilla camps in Zambia and Mozambique during the Lancaster House Conference.

Constitution bore similarities to most independence constitutions which the British bequeathed to their former colonies at independence, it contained certain features which, in the Zimbabwean context, were designed to protect the interests of the white minority. Some of the features such as the protection of private property from compulsory acquisition, the entrenched white seats, and the inheritance of the colonial state structures and its legal order, had a bearing on agrarian reform. These issues are examined in the following sections.

3.2.2 The Protection of Private Property.

By 1979 the British already had a model clause for the protection of private property from compulsory acquisition which they included in independence constitutions. The clause, which first appeared in the Nigerian independence Constitution, was tightened in the Kenyan independence Constitution and became an integral part of subsequent independence Constitutions (Ghai and McAuslan 1970, Ng'ong'ola 1992).¹⁵ In the context of Zimbabwe, the relatively large number of settlers and their historical links with imperialism assigned a special significance to the provisions relating to the protection of private property.

As part of the Declaration of Rights, the British proposed section 16 of the Constitution which sought to prohibit the compulsory acquisition of property of any description except under the authority of law which required the acquiring authority to give reasonable notice of the intention to acquire the property in question. The property could only be acquired in the interests of defence, public safety, public order, public morality, public health, and town and country planning. A significant departure from previous independence constitutions which reflected the importance attached to the protection of settler interests was the proposal that *only under-utilised land could be compulsorily acquired for settlement of land for agricultural purposes* (own emphasis). In the event of compulsory acquisition, the acquiring authority would be required to pay prompt and adequate compensation. Finally, the state would be required to permit both Zimbabweans and non-Zimbabweans to remit money

¹⁵ See for example, Sections 19, 16 and 18 of the Kenyan, Malawian and Zambian independence Constitutions respectively.

paid by way of compensation to any country of their choice. Access to the courts would be guaranteed for disputes arising out of land acquisition. As part of the Declaration of Rights, section 16 would be entrenched for a period of ten years from the date of independence, during which period it could only be amended by a 100% parliamentary majority. As will be recalled, the above clause had been an integral part of the Anglo-American proposals of the mid-1970s.

The issue was not whether or not private property rights should be protected in an independent Zimbabwe. Rather, what was at stake was the nature and extent of the protection that should be accorded to private property rights. Hence the PF's constitutional proposals contained a clause on freedom from deprivation of property. It provided that every person would be protected from having her property compulsorily acquired subject to the right of the government to acquire any property in the public interest. Compensation for property so acquired would be at the discretion of the government (Baumhogger 1984). In terms of the clause as formulated, compensation would not have been a legal right but would have been at the discretion of the state.

While the proposed clause on compulsory acquisition applied to all categories of property, the parties concerned were well aware that, given the history of land, its significance depended on whether it would frustrate or facilitate compulsory land acquisition. In fact, the British proposals singled out land and proposed that only under-utilised land could be compulsorily acquired for settlement for agricultural purposes. The PF objected to the British proposals because of the restrictions they imposed on land acquisition. First, it argued that the proposal to entrench the Declaration of Rights for a period of ten years placed intolerable restrictions on the sovereignty of the Parliament of Zimbabwe and that it granted a veto to the minority.¹⁶

Second, it argued that the British proposal on the freedom from deprivation of private property would defeat the basic objective of the struggle in Zimbabwe which was the recovery

¹⁶ Commenting on a similar provision in the Constitution of Zimbabwe-Rhodesia, Mugabe (1983:105) had earlier argued that it was a Bill of Race and not of Rights.

of the land of which people were dispossessed without compensation; and that the government of the Republic of Zimbabwe would have to deal with the land problem and therefore must have the right to acquire any land in the public interest and to 'pay compensation at its discretion. Third, it argued that the British proposals would convert the freedom from deprivation of property into a right to retain privilege and perpetuate injustice. Finally, it argued that the proposal on the remittability of compensation paid for land to any country, was quite iniquitous; accorded the wealthy a privilege which is normally accorded foreigners; and could have disastrous consequences for the economy (Baumhogger 1984:1100).

In response to the PF objections, Lord Carrington argued that the provisions concerning land struck a fair balance between the protection of private property and the legitimate desire of the government to spread land ownership; that the government of the day would be able to acquire under-utilised agricultural land for settlement against the payment of adequate compensation; and that the principle of compensation for those who are deprived of their land was an established one and had parallels in other independence constitutions. More important, he suggested that an independent government would be able to appeal to the international community for help in funding land acquisition for agricultural settlement (Baumhogger 1984:1102).

In a subsequent statement Lord Carrington pointed out that any settlement scheme would clearly have to be carefully prepared and implemented to avoid adverse effects on production. As will be shown in the following chapters, this is an issue which has dominated agrarian reform. Probably drawing from the Kenyan experience, he suggested that the Zimbabwe government might well wish to draw in outside donors such as the World Bank in preparing and implementing a full-scale agricultural development plan. Furthermore, he suggested that the British government would be prepared, within the limits imposed by its financial resources, to provide technical assistance for settlement schemes and capital aid for agricultural development projects and infrastructure. He added that in the event of an Agricultural Development Bank or some similar institution being set up to promote agricultural development including land settlement schemes, the British government would be prepared to contribute to the initial capital (Baumhogger 1984:1106).

Lord Carrington's statements were reiterated by the statement of R. Byatt, an Assistant Secretary of State in the British Foreign Office, which was issued in Salisbury on 20 October 1979 (Baumhogger 1984:1114). Byatt's statement was issued with the approval of Lord Carrington and its objective was to deny reports of a proposed £1000 million international fund to buy out white farmers in Zimbabwe in the event of a settlement. The proposal to set up an international Zimbabwe development fund of US\$1500 million had featured in the Anglo-American proposals of 1977. Byatt's statement went beyond denying reports of a proposed fund and reiterating Lord Carrington's proposals. The statement suggested that:

Perhaps more important however, would be the provision of aid to help develop infrastructure for new farming areas, and to provide irrigation to bring new land into active cultivation. In the British Government's view, the aim of an agricultural development programme would be to increase the country's total agricultural potential and production, and to provide new opportunities *without unnecessarily disturbing the present productivity of the commercial farming sector* (Baumhogger 1114) (own emphasis).

The statement was intended to allay the fears of the settler minority in Zimbabwe and to assure them that British imperialism was aware of their interests and was not about to desert them. The statement, moreover, showed that the British did not contemplate the restructuring of property relations in an independent Zimbabwe. For them, the future stability of capitalist social relations in Zimbabwe lay in maintaining the economic dominance of the white minority and the protection of imperialist interests. As indicated by Lord Carrington, the British plans contemplated that, in addition to aid from imperialist countries, multilateral international financial institutions such as the World Bank, would play an important role in any future agrarian programme.

To overcome the Patriotic Front's objections over the clause protecting private property, Lord Carrington adopted a carrot and stick strategy. The carrot was, as has been indicated, the promise that Britain would provide assistance for agricultural development to the government of Zimbabwe. When the carrot failed to tantalise the PF into an agreement, he used the stick which was the threat to exclude the PF and to continue negotiations with the Muzorewa delegation which had accepted the constitutional proposals. This was termed the 'second class option' (Charlton 1990).

The talks were saved from collapse by the USA's undertaking to help finance a multinational fund to assist in agricultural and economic development. The PF accepted the proposed Constitution and argued that the undertaking went 'a long way in allaying the great concern that we have over the whole land question arising from the great need our people have for land and our commitment to satisfy that need when in government'(Baumhogger 1984:1113). In his memoirs, Nkomo (1984:196) confesses that; 'Neither the Americans nor the British would tell us how much they would put up, but the principle was a useful one'. In their desperation, the PF were prepared to hold on to a vague undertaking which could not be enforced in future.¹⁷

While the PF's objections testify to its concerns over land, such concerns can only be properly appreciated and judged on the basis of its overall agrarian policy. According to Nkomo (1984:195), the PF wanted the new Constitution of Zimbabwe to permit the government to expropriate farmland if it was not properly used. He adds that:

What we wanted was an arrangement like that made for Kenya at independence, whereby the British government itself would compensate farmers whose land was taken over in the interest of efficiency and food production (1984:196).

This had consistently been the policy of the ZAPU wing of the Patriotic Front of which Nkomo was the leader. The policy was maintained throughout the liberation struggle as reflected in the party's manifesto for the 1980 elections (Astrow 1983:138-9). Research would have shown that the Kenyan model of land acquisition would not have been the best for Zimbabwe. In fact the British government did not compensate the farmers whose land was acquired. It merely provided loans which were repaid by the resettled peasantry (Leo 1984, Hazlewood 1985). There were no radical differences between ZAPU's position and the British one. ZANU's land policy advocated socialist nationalisation. This was, however, qualified to indicate that only under-utilised or vacant farmland would be redistributed to African peasants

¹⁷ Given the pressure that they were operating under, the leadership of the Patriotic Front may have seen the assurances concerning the fund as a salvation. They may therefore have accepted the assurances as a way out of a stalemate. Despite statements to the contrary, they may have preferred to cling to the illusion that the fund would be more substantial than indicated by the British.

(Astrow 1983:140). The qualified position was the one which was articulated in the 1980 election manifesto.

It would thus appear that the PF's constitutional proposals, which made provision for the protection of private property against compulsory acquisition subject to the right of the government to acquire the property in the public interest and the payment of compensation at the government's discretion, were intended for under-utilised, unused and abandoned land. Beyond wartime rhetoric, the agrarian programmes of both the wings of the PF did not envision a transformation of the relations of production. For example, neither party had a position on the issue of land restitution.

The independence Constitution thus contained section 16 which bore a close resemblance to section 124 of the Constitution of Zimbabwe Rhodesia. The differences were that under section 124 compulsory acquisition had to be authorised by the High Court; and under-utilised land was defined and a provision made that the amount of compensation should not be less than the highest amount which the land together with the improvements would have realised if sold on the open market by a willing seller to a willing buyer. Another difference is that section 16 provided that only under-utilised land could be acquired for settlement for agricultural purposes. Perhaps the similarities are striking in that they show the cosmetic nature of the changes which were contemplated by the framers of the Constitution.

3.2.3 The Protection of Private Property and Implications for Agrarian Reform.

As pointed out above, both the PF and the British were in agreement on the principle of the protection of the right to private property. They, however, disagreed on the nature and extent of the protection to be accorded to private property rights. The implications of the two proposals for agrarian reform can only be appreciated in the context of the situation in Zimbabwe in 1979. While the British proposals gave comprehensive protection to private property and placed stringent restrictions on the capacity of the state's to acquire land, the PF's

proposals were too open-ended and would have given too much discretionary power to the state.

In the context of Zimbabwe in 1979, the British proposals, which became section 16 of the Constitution, protected existing settler property rights from expropriation except under restrictive conditions and subject to prompt and adequate compensation. Section 16 should be read in conjunction with section 11 which guaranteed the fundamental rights and freedoms of the individual, and section 18 which guaranteed equality before the law. Henceforth, all Zimbabweans regardless of material circumstances were to be equal before the law and were to enjoy equal rights and freedoms - one such right being the right to have their property protected from expropriation. The property rights which received constitutional protection were those which existed in 1979, that is, those which had been created during the ninety or so years of colonialism. Commenting on property clauses akin to section 16, Waldron (1990:17) argues that:

there is no implication from this that everyone is entitled to have or obtain property or that people who are not owners have a right to be put in that position. If somebody does not have and has never had any ownership rights over anything, he has no ground for complaint under this provision; indeed it does not concern him.

As argued below, the Constitution permitted contractual modes of acquisition between willing sellers and willing buyers. For purposes of agrarian reform, private property rights in land could only be expropriated in circumstances of under-utilisation and subject to the payment of prompt and adequate compensation which had to be in foreign exchange if the owner of the land so desired. The requirement that compensation had to be prompt and adequate was bound to defeat efforts to redistribute land. The provision denied the state the freedom to fix compensation at any rate other than the market price. The 'prompt' requirement precluded the staggering of payments which is a feature of many land reform programmes. Commenting on the ridiculousness of the right to payment of compensation in foreign exchange, a white Zimbabwean politician has argued that:

What, in fact, it caused this Government to concede, is the position whereby we Zimbabweans should have to import our own land. ... Even if the owner, however he became such, was a full citizen of Zimbabwe, and even so, if he were an alien, his title to land gave him the right to demand payment for land at

'market prices' in any currency - and usually this would be forex - US dollars, British pounds or other currency of which our country has had severely limited amounts, as we all know, even since 1965 when the disastrous decision was taken to declare unilateral 'independence'. So we had to buy our land, like cars, from Britain, America.¹⁸

Read as a whole, the Constitution guaranteed *de jure* equality and precluded the realisation of *de facto* equality. The entrenchment of the right to property in the Declaration of Rights for a period of ten years was designed to protect the *status quo* as it was in 1979. Waldron (1990:5) has commented that:

Under serious scrutiny, there is no right-based argument to be found which provides an adequate justification for a society in which some people have lots of property and many have next to none. The slogan that property is a human right can only be deployed disingenuously to legitimize the massive inequality that we find in modern capitalist countries.

His comments, while made in respect to the right to property in general, apply to section 16 of the Lancaster House Constitution. As shown above, the PF correctly argued that the proposals to entrench the Declaration of Rights for a period of ten years placed intolerable restrictions on the sovereignty of the Parliament of Zimbabwe and that it granted a veto to the minority. Indeed, the issue of land was intricately linked with the whole question of sovereignty. Thus, the freezing of the *status quo vis-a-vis* land ownership had implications for the question of sovereignty. The issue of land redistribution was thus put beyond the will of the people. From the outset, the stringent protection of settler property rights denied legitimacy to the Constitution which was seen as an imposition by the British.

Ultimately, the method of acquisition which the Constitution enshrined was the contractual method based on the concept of a willing seller and a willing buyer. Land was to be acquired by way of a contract of sale. By foreclosing compulsory methods of land acquisition, the Constitution relegated land acquisition to private law methods based on freedom and sanctity of contract. Land was treated like any other commodity and was therefore subject to market forces of supply and demand. Like any other commodity, it was to be distributed through the impersonal and invisible hand of the market. It is important to

¹⁸ The Minister of Health, Dr Timothy Stamps during the Second Reading of the Land Acquisition Bill, Zimbabwe Parliamentary Debates, Vol. 18, No.62, Cols. 4537-8 March 1992.

emphasise that the power of the state was hamstrung by the constitutional provisions which reduced it to the status of an ordinary legal subject. To purchase land, it had to go into the market, look for a willing seller and pay the going price based on the vagaries of the market.

The PF proposals erred in the other direction - they proposed to give the state wide discretionary powers in the determination of compensation for property compulsorily acquired. Compensation would only have been payable at the discretion of the state. Thus, the state would not have been under any legal obligation to pay compensation. Since compensation was not a legal right, the proposal did not set out the basis upon which compensation would be calculated. Such discretionary provisions are always open to abuse. While the PF's concern for land redistribution is appreciated, it should have been obvious that such a discretionary clause would not be accepted in a negotiated settlement.

What other alternatives did the framers of the Lancaster House Constitution have? Such a question can best be answered by examining what other framers of constitutions have done in similar situations. Namibia and South Africa provide good examples because they had similar colonial problems as Zimbabwe. Section 10 of the Namibian Constitution guarantees equality before the law and freedom from discrimination. Section 16 guarantees the right to own and dispose of property. It also gives the state the right to expropriate property in the public interest subject to the payment of just compensation in accordance with the requirements and procedures to be determined by an Act of Parliament. Section 23 makes provision for affirmative action in favour of the victims of apartheid and provides for derogations from the equality provisions of section 10 in such cases. In the light of the history of apartheid, the Namibian Constitution not only guarantees *de jure* equality, but also goes further to make provision for programmes to promote *de facto* equality. It thus goes further than the Zimbabwean Constitution.

The South African Constitution Act No. 200 of 1993 also goes further than the Zimbabwean Constitution. Section 8 thereof guarantees equality before the law, equal protection of the law, and freedom from discrimination. In order to facilitate the full enjoyment of the above rights by the victims of apartheid, the guarantees provided by the section do not preclude measures designed to achieve the adequate protection and advancement of the

victims. More specifically, persons and communities who were dispossessed of their rights in land under apartheid are entitled to claim restitution of such rights. Section 121 makes provision for an Act of Parliament which will regulate the restitution of rights of persons and communities who were dispossessed of land after 1913. Section 122 makes provision for the establishment of a Commission on Restitution of Land Rights which will, *inter alia*, investigate the merits of any land claims; and mediate and settle disputes arising from such claims. Property rights are protected against expropriation except for public purposes only and subject to the payment of agreed compensation or, failing agreement, to the payment of just and equitable compensation within such a period as may be determined by a court of law. The factors to be taken into account in determining just and equitable compensation are the use to which the property is being put, the history of its acquisition, its market value, the value of the investments in it by those affected, and the interests of those affected (section 28).

Unlike the Lancaster House Constitution, the Constitutions of Namibia and South Africa take cognisance of racial inequalities, the unpalatable legacy of apartheid. Accordingly, they make provision for the redress of such inequalities. The issues of dispossession and discrimination are recognised rather than ignored and left to fester. Hence the Namibian and South African Constitutions have more legitimacy than the Lancaster House Constitution. More specifically, they make provision for agrarian reform. Undoubtedly, there are other constraints on agrarian reform in both Namibia and South Africa. But the constraints are qualitatively different from those imposed on the government of Zimbabwe by the Lancaster House Constitution. The implications of the Lancaster House Constitution for agrarian reform is best summed up in the words of Feder (1987:533-4) on agrarian reform in Latin America. He argues that:

In all societies, the law can serve to freeze the existing structure of society and to give an aura of respectability and legality to severe social injustice, or can serve (within limits) to bring about greater justice by ordering the reallocation of resources and greater balance of rights and obligations, if these can be properly enforced.

The Lancaster House Constitution fell into the category of laws which serve to freeze the structure of society and to give an aura of respectability and legality to severe social injustice.

3.2.4 Racial Representation and the Agrarian Question.

One of the six principles which had to be satisfied before the British could grant independence was that, regardless of race, there should be no oppression of the majority by the minority or of the minority by the majority. The principle was translated into a proposal on reserved seats for whites. The British proposed a Parliament which would consist of a House of Assembly and a Senate. The House of Assembly was to be composed of 100 members and of these, 80 were to be elected by common roll voters, that is, black voters, while the remaining 20 were to be elected by Europeans, Asians and Coloured voters. The Senate was to be made up of 40 Senators, 14 of whom were to be elected by the Black members of the House of Assembly, 10 by the white members of the House of Assembly, 10 were to be chiefs elected by the Council of Chiefs, and 6 were to be appointed on the advice of the Prime Minister. Separate racial representation would be entrenched in the Constitution for a period of 7 years from the date of independence. Parenthetically, the Constitution of Zimbabwe Rhodesia of 1979 contained a similar provision which reserved 28 seats for the white minority for a period of 10 years.

Initially, the PF proposed a House of Assembly which would consist of 120 members elected on a single member constituency basis, and a Senate consisting of 40 Senators elected by the members of the House of Assembly sitting as an electoral college (Baumhogger 1984). It revised its proposals and suggested a House of Assembly which would consist of 120 members; 96 of them to be elected on a common roll while the remaining 24 seats were to be reserved for white members, 15 of them to be elected by a reserved white roll and 9 to be elected on the common roll. In the revised proposal, the Senate was to consist of 60 Senators, of whom 48 would be elected by black members of the House of Assembly and 12 would be elected by white members (Baumhogger 1984). In the end, the British proposals were accepted and formed part of the independence Constitution.¹⁹

The idea of reserved seats was not new in the history of British decolonisation in Africa. At the Lancaster House Conference of 1960 on the Kenyan independence Constitution,

¹⁹ Commenting on a similar provision in the Constitution of Zimbabwe-Rhodesia, Mugabe (1983:112,117) had argued that the provision perpetuated racism and vitiated the principle of democracy.

a number of seats were reserved for minorities (Ghai and McAuslan 1970). What was new, however, was their entrenchment in the Zimbabwean Constitution. This fact, combined with the entrenchment of the protection of private property from compulsory acquisition for ten years, ensured the protection of settler interests.

As indicated, the justification for the constitutional provisions relating to racial representation was that they were designed to guarantee that the majority would not oppress the minority. While the issue of minority protection is well recognised in international human rights law, such protection does not extend to the maintenance of special privileges for a minority which is socially and economically dominant (Sachs 1990).²⁰ Hence the Constitution of Zimbabwe entrenched and perpetuated white domination and privilege under the guise of the protection of minority rights.

As a result, about a quarter of a million whites were guaranteed 20% of the seats in the House of Assembly and 25% of the seats in the Senate while about 7 million Blacks were restricted to 80% and 75% seats respectively. The Constitution perpetuated the racialisation of social relations and racial inequality which had been the cornerstone of colonialism. Throughout the colonial period, the franchise was always directly linked with property ownership, the result being an unmediated articulation of political and economic power. While it might appear that the Constitution enshrined universal adult suffrage, a closer analysis shows the contrary. Less than 4% of the population had 20% of the seats while over 96% had 80%. In fact, the skewed racial representation reflected the economic dominance of the white minority, that is, an indirect link between property ownership and the franchise. In other words, less than 4% of the population was guaranteed 20% political representation in order to protect its vast economic interests, including land ownership, and those of imperialism. Through the medium of the Constitution, economic domination was recognised and translated into disproportionate political representation.

²⁰ See for example the Article 27 of the International Covenant on Civil and Political Rights.

3.2.5 The Inheritance of Colonial Law and the State.

The Lancaster House Agreement and Constitution made provision for the law to be applied in Zimbabwe and transitional arrangements for the transfer of state power. Section 89 provided that:

Subject to the provision of any law for the time being in force in Zimbabwe relating to the application of African Customary law, the law to be administered by the Courts in Zimbabwe shall be the law in force in the colony of the Cape of Good Hope on 10th June 1891, as modified by subsequent legislation having in Zimbabwe the force of Law.²¹

The colonial legal system was thus inherited intact. Included in 'subsequent legislation' were the laws which had been passed by the illegal white minority regime during UDI. As part of the transitional arrangements, legality was to be restored by Zimbabwe's return to British rule under a Governor who was to be tasked with supervising the elections. The Governor's powers included legislative and executive powers and were set out in the *Southern Rhodesia (Interim Provisions) Order* of 1979. In terms of section 4(4) of the Order, the Governor was empowered to deal with the issue of the application of laws made during UDI. The Governor, Lord Soames, resolved the issue in terms of the *Constitution (Interim Provisions) Ordinance* of 1979. The Ordinance provided that, subject to certain exceptions, all existing laws, including instruments purporting to have effect as law before the return to legality, were to have full force and effect. There was no disagreement on this issue as the Patriotic Front had proposed a general validation of all existing laws which included pre-UDI and post-UDI laws, subject to the specific repeal or amendment of offending legislation which would be detailed in a schedule. In addition, it proposed a blanket or 'long-stop' invalidation of any legislation inconsistent with the Constitution (Baumhogger 1984:1056).

Chapters 1 and 2 have shown that throughout the colonial period, law was an aspect of racialised colonial social relations. Colonial relations of domination and exploitation were, *inter alia*, expressed and experienced in the form of law. These were the same laws which

²¹ The provision has a long history stretching back to the High Commissioner's Proclamation of 10th June 1891. Subsequently, it appeared as section 26 of the Matebeleland Order in Council of 1894, then as section 49(2) of the Southern Rhodesia Order in Council of 1898, later as section 87 of the Constitution of Zimbabwe Rhodesia.

were validated by the Constitution. Laws which gave discretionary and unrestricted powers to administrators in their dealings with the peasantry were thus inherited. Unlike the Constitutions of Namibia and South Africa which make provision for administrative justice in the Declaration of Rights, the Lancaster House Constitution was silent on the issue.²² Neither the British nor the PF proposals contemplated the right to administrative justice as a fundamental right to be included in the Declaration of Rights. Given the wide discretionary powers that authoritarian colonial laws gave to administration, the least that could have been done if the laws were to be inherited by the post-colonial state, was to make their application subject to administrative review. As Chapters 5 and 6 show, in the absence of a right to administrative justice, the peasantry have no recourse to the courts in the event of the exercise of discretionary powers enshrined in colonial and post-colonial legislation.

But more important as regards agrarian reform, the Constitution entrenched the Roman-Dutch law of property which was applicable at the Colony of the Cape of Good Hope on June 10, 1891. In terms of Roman-Dutch law, ownership involves a perpetual and heritable right to use and alienate property. The law requires property rights in land and transactions thereof to be registered. A certificate evidences title to a specific piece of land. Sachs (1990:123) observes that work done by lawyers in South African Universities distinguishes between ownership as *imperium* and ownership as *dominium*. *Imperium* is a feudal type of ownership which gives the title-holder control, not only of land, but of the people on it. Roman-Dutch law as received and developed in colonial situations such as South Africa and Zimbabwe, emphasised ownership as *imperium* rather than as *dominium*, which gives less rights. Thus the inherited Roman-Dutch law of property provided stringent protection to settler rights in land.

The Constitution also enshrined the application of African customary law which was defined as 'the tribal law and custom of Africans of particular tribes'. Chapter 2 has shown that by the end of the colonial period, customary law had undergone fundamental changes which made it very misleading to speak of African customary law as synonymous with pre-colonial

²² See sections 18 and 24 respectively on the right to administrative justice.

legal forms. Moreover, the colonially invented customary land tenure laws were used as an instrument of controlling the peasant production process. As Chapter 6 shows, the laws have been used for a similar purpose by the post-colonial state.

The transitional arrangements ensured that the apparatus of the colonial state were inherited intact. Mandaza (1986:39) argues that under the transitional arrangements, the British governor was to ensure that the state machinery - the army, the police, the prisons, the public service, the air force, the judiciary, etc.- remained in white hands. In terms of the *Southern Rhodesia (Interim Provisions) Order 1979* all officers and authorities in Southern Rhodesia were required to be subordinate to and obey the Governor (section 5(3)). The definition of 'officers and authorities' in the Order included 'officers and authorities purporting to exercise governmental or other public functions' prior to the restoration of legality (section 5(6)). The *Constitution (Interim Provisions) Ordinance* of 1979 validated the appointment of public officials who may have been invalidly appointed (section 5).

Thus, as with the colonial legal order, the colonial state was inherited intact. As argued in foregoing chapters, the state is a relation of domination and exploitation. As Weber (1948:78) put it: 'The state is a relation of men dominating men, a relation supported by means of legitimate (i.e., considered to be legitimate) violence'. The state is therefore not an empty vessel which can be filled with any content. The apparatus of the colonial state were inherited intact. According to Mandaza (1986:45) after the elections in 1980, the new government was forced to rely on a public service which was almost entirely white in composition. Of the 10 570 established civil service posts, only 3 368 were black. And none of the posts held by blacks were above the rank of a Senior Administrative Officer. Attempts to Africanise the civil service did not 'necessarily mean the introduction of new attitudes and practices as many blacks promoted within the post-independence civil service received training within the Rhodesian state' (Alexander 1994:326). Thus the apparatus of the colonial state survived independence. The result was a continuation of colonial ideologies within the state. As the following chapters show, this had important implications for agrarian reform.

Conclusion.

The decolonisation process, the making of the independence constitution, and the transfer of state power had serious implications for post-colonial agrarian reform. As argued in this chapter, the independence constitution, which was the culmination of the decolonisation process and which institutionalised the transfer of state power, protected the inherited colonial social relations and thus foreclosed the transformation of the agrarian structure. The protection of private property rights in land as a fundamental right effectively constrained land acquisition and redistribution. The retention of the colonial state apparatus and its authoritarian legal order meant the continuation of oppressive relations between the state and the peasantry. With the inheritance and retention of the colonial social relations, the marginalisation of the peasantry was bound to continue.

The constraints imposed by the constitution and the struggles to overcome them were mediated through post-colonial political struggles and decisions reflecting diverse socio-economic interests. The political struggles and decisions were expressed in and regulated through law. The following chapters examine struggles for and against agrarian reform. The next chapter examines the impact of constitutional constraints on attempts to acquire land for redistribution.

CHAPTER 4.

LAND ACQUISITION 1980-1990.

Introduction.

Chapter 3 examined the constitutional implications for post-colonial agrarian reform in general. As regards land, it argued that the Constitution protected existing property rights and thus imposed stringent constraints on future efforts to acquire land for redistribution. This chapter is concerned with the manner in which land was acquired within the restrictive framework imposed by the Constitution. For while the Constitution established a restrictive framework which, to a large extent, shaped land reform, the actual process of post-colonial land acquisition was ultimately a political question. Within the restrictive framework, the government had options, albeit limited ones. The choice of options depended on political processes and decisions reflecting post-colonial socio-economic interests. Moreover, the constitutional constraints were not the only limitations on the ability of the state to acquire land. This chapter also examines the interplay between the constitutional constraints and other constraints which emerged during the first decade of independence.

The issues of land acquisition and land redistribution are interrelated - land acquisition precedes land redistribution. Hence in the absence of unoccupied frontier lands, the amount of land that can be redistributed depends on land acquisition. While the two issues are closely interlinked, this chapter analyses land acquisition while land redistribution is examined in the next chapter. These two related issues are discussed separately because of the different legal, political and economic issues they raise. While land acquisition involves issues of expropriation and the extinguishing of property rights, land redistribution involves the allocation of land and the creation of new property rights. In the context of Zimbabwe, while the compulsory acquisition of property rights was constrained by the Constitution, the creation of new property rights was not.

The chapter is divided into three sections. The first section examines constraints within the Zimbabwean political economy which shaped land acquisition. These include the policy of reconciliation which was adopted by the new government, the threat of destabilisation from South Africa, the constraints imposed by the Lancaster House Constitution, and the structural

constraints imposed by the inherited economy. In addition, it analyses the government's overall economic policy and examines how this shaped the acquisition of land.

The second section examines ideological struggles for and against land acquisition. It analyses the dominant debates which revolved around issues of the efficiency and productivity of different sectors, that is, the land usages of the agrarian bourgeoisie and the peasantry. The section examines arguments against radical land acquisition which suggested that the agrarian bourgeoisie were more productive than the peasantry and, therefore, that land acquisition would disrupt production and would have an adverse impact on employment and export earnings. In addition, it examines counter arguments which suggested that there were large amounts of land which were owned by the agrarian bourgeoisie which were under-utilised. The final section analyses the legal forms which the state relied upon in the acquisition of land. It examines restrictions inherent in the nature of the legal forms. In addition, the section examines the *Land Acquisition Act* of 1985 and the changes it introduced to the process of land acquisition.

4.1 The Political Economy and Land Acquisition.

4.1.1 The Political Economy.

The united front which ZANU and ZAPU presented at the Lancaster House Conference broke down before the 1980 elections. ZANU contested the elections as ZANU (Patriotic Front (PF)) while ZAPU contested them as the Patriotic Front. The elections were won by ZANU (PF) with 57 out of the 80 common roll seats, while ZAPU was second with 20 seats. ZANU (PF)'s support was concentrated in the northern, eastern and south-eastern parts of the country, while ZAPU's support was concentrated in the north-western and western parts. The regional voting patterns reflected the military spheres of operation of guerrilla forces in the late 1970s. In the early and mid-1980s ZAPU controlled areas were marginalised as a result of conflict between the two parties and this had implications for land reform (Alexander 1991). The remaining three seats were won by the United African National Congress (UANC) of Bishop Muzorewa, which as will be recollected, had won the 1979 elections held after the internal settlement. The Rhodesia Front of Ian Smith won the 20 reserved white seats. Thus

ZANU(PF) won the right to form the first post-colonial government. On paper, the results of the elections were favourable to agrarian reform as the parties which had prosecuted the war of liberation had a clear majority.

Immediately after ZANU (PF)'s victory, the Prime Minister elect, Robert Mugabe, announced a policy of reconciliation. He assured the nation that whatever government he would form would adhere to the '*letter and spirit of the Constitution and would respect the rule of law and the civil rights and freedoms enshrined in it*' (Baumhogger:1984:1385 own emphasis). The civil rights and freedoms enshrined in the Constitution included the right to private property which had serious implications for land acquisition.¹ While assuring all the people that his government would strive to bring about meaningful change to their lives, he asked them to be patient as change would not occur overnight. He formed a government of national unity and his Cabinet included five ministers from ZANU (PF)'s wartime ally, ZAPU, and two whites, Dennis Norman, a former President of the Rhodesian Farmer's Union, who became the Minister of Agriculture,² and David Smith, a former member of the Rhodesia Front, who became the Minister of Trade and Commerce.

The policy of reconciliation and the government of national unity were dictated by the need to create stability in a country emerging from war and to allay whatever fears whites might have had about the new dispensation. Colonial state policies had created an economy which was largely dependent on the capital and skills of the white minority. In order to persuade the white minority to remain in the country, there was need to assure them that the sins of the past would not be visited upon them under the new political order. To a large measure, the policy of reconciliation was also dictated by the need to allay the suspicions of imperialist powers which had underwritten the Lancaster House Agreement (Mandaza 1986:42, Stoneman 1988:45). Hence the Prime Minister elect's undertaking that his government would respect both the letter and spirit of the Constitution. In addition, there were

¹ See Chapter 3 on the discussion of the right to private property which was enshrined in the Constitution.

² The appointment of Norman, a former President of the powerful Rhodesian Farmers' Union to the Agriculture portfolio was intended to allay the fears of white farmers.

fears of South African military, political and economic destabilisation which could not be ignored.

The above constraints faced a government of national unity which was led by a party which was ostensibly guided by Marxism-Leninism. During the first decade of independence and despite evidence to the contrary, ZANU(PF) continued to assert its adherence to socialist ideology. The party's ideology remained at the level of slogans and rhetoric without ever being translated into specific programmes and policies. Faced with inherited and conjunctural constraints on one hand, and the great expectations of the majority for radical change on the other, the government adopted a policy of 'growth with equity' in the sanguine hope 'that only a high rate of growth would permit improvements in the living standards of the majority without adversely affecting the white minority' (Mkandawire 1985:247). In other words, the government sought to harmonise the conflicting interests of blacks on one hand, and those of the white minority and imperialism on the other, by adopting a policy which hinged upon high growth rates in order 'to avoid zero-sum situations' (Mkandawire 1985:247). The policy of growth with equity accepted the inherited accumulation strategy. In other words, it hinged on the promotion of economic growth within the inherited relations of production and the redistribution of the proceeds in an a more equitable manner. Local white capital and international capital which controlled the means of production were to be the engines of growth while the role of the state was to concentrate on equitable redistribution.

Overall, and despite socialist rhetoric, the government's policy was based on an acceptance of the inherited capitalist economy (Mkandawire 1985:260). Some of the government's objectives which were stated in *Growth with Equity* (Zimbabwe 1981), were the establishment of a society founded on socialist democratic and egalitarian principles; the ending of imperialist exploitation, the achievement of a greater and more equitable degree of ownership of natural resources including land; and promoting the participation in the ownership of a significant proportion of the economy by nationals and the state. The statement, however, went on to say the government recognised the vital role that foreign investment could play in the development of the economy. With respect to agrarian reform, the statement acknowledged the importance of white farmers.

In the *Transitional National Development Plan* (TNDP) (Zimbabwe 1982a), the government reiterated its intention to redistribute wealth. In the foreword to the Plan the then Prime Minister, Robert Mugabe, stated that:

The Plan, however, recognises the existing phenomenon of capitalism as an historical reality, which, because it cannot be avoided, has to be purposefully harnessed, regulated and transformed as a partner in the overall national endeavour to achieve set national goals. Accordingly, whilst the main thrust of the Plan is socialist and calls for a greater role by the State through the instrumentality of State enterprises, worker participation, and socialist co-operation, ample room has been reserved for performance by private enterprise (Zimbabwe 1982a:i).

The clear message of the Plan was that capitalism had to be promoted, reformed and democratised rather than transformed. The ambivalence reflected in the TNDP was further reflected in the investment guide-lines which sought to create a favourable climate for foreign investment (Zimbabwe 1982b). During the first decade the only significant development in the ownership of the means of production was the direct or indirect state acquisition of majority or part ownership of key manufacturing concerns. By 1989 the state owned 16 per cent of the capital assets of the manufacturing sector (Riddell 1990:340). State capitalism appears to have been equated with socialism.

The Orwellian doublespeak in the *TNDP* reflected the dilemma facing the government. However, it had already become clear soon after independence that transformation was not on the cards. In March 1981 the government had organised the Zimbabwe Conference on Reconstruction and Development (ZIMCORD) which was 'intended to mobilise international financial resources through grants and soft loans' (Zimbabwe 1986a:8). The conference involved about 45 countries and organisations which pledged a total of \$1,29 billion which was more than the \$1,25 billion sought by the government of Zimbabwe. The main theme of the conference was reconstruction rather than transformation. Chimombe (1986:131) observes that the significance of ZIMCORD was that it was to contribute about one-third of the financial requirements of the TNDP. In other words, Zimbabwe's socialist transformation was to be funded by donations from such institutions as the World Bank which made the largest pledges.

At the best of times, the attempt to balance the conflicting interests of the black majority on one hand, and settler and imperialist interests on the other, would have been tantamount to walking a tightrope. The growth of the economy during the first two years seemed to vindicate the government's policies. Between 1980 and 1982 the economy experienced a huge upswing as a result of, among other things, the lifting of sanctions, access to external finance, and two good agricultural seasons (Riddell 1984, Kadhani 1986, Stoneman 1988). In accordance with the 'equity' component of its policy, the government increased expenditure on social services such as education and health in an attempt to meet the demands of the majority. On the 'growth' side of the policy, the government was very optimistic about the future as is reflected by its prediction of a growth rate of 8,2% between 1982 and 1985 (Zimbabwe 1982a).

This seemingly auspicious start was, however, short-lived. The strategy of providing social services soon led to a recurrent budget deficits. In addition, following the removal of sanctions, there was a considerable upsurge in the value of imports which outstripped growth in the value of exports. As a result, Zimbabwe soon experienced trade and balance of payments deficits. In addition, the external debt increased considerably and by 1984 the debt service ratio had risen to 29% (Riddell 1984, Kadhani 1986, Stoneman 1988). To compound the above constraints, a prolonged drought affected the country during the 1982/83 and 1983/84 agricultural seasons. The economy recovered and grew by almost 3% in 1984, and by over 9% in 1985. Growth fell to about 1% in 1987 as a result of yet another drought (Stoneman 1988). The government argues that in the late 1980s problems continued to bedevil the economy (Zimbabwe 1991a, 1991b). In the circumstances, by the end of the first decade of independence, the government was seriously considering introducing a structural adjustment programme.

In 1983 the government adopted austerity measures akin to those espoused by the IMF such as the removal of consumer subsidies. The government, however, argued that the measures were home-grown (Mkandawire 1985). In 1982 the government sought assistance from the IMF because of the balance of payments disequilibria. A standby agreement was arranged on the usual IMF conditionalities such as the reduction of government expenditure

and the devaluation of the currency. The facility was suspended in 1984 following the government's failure to cut down on public expenditure (Kadhani 1986). The government, however, continued to implement the 'home-grown' economic reforms.

The above problems exposed the limitations of the policy of 'growth with equity'. Kadhani (1986:111) observes that as a result of the economic problems of the early 1980s, long-term planning was abandoned and

the annual government budget became not only the central, and independent, instrument for resource mobilisation and distribution but also the major mechanism for the structuring of economic and financial policy.

Thus, short-term crisis management rather than long-term issues determined policy. More important, the problems exposed a number of shortcomings about the economy. First, the fall in the value of Zimbabwe's exports exposed the economy's vulnerability to recessions in the global economy. Second, the impact of the drought emphasised the heavy reliance of the economy on agriculture. At independence manufacturing was the biggest contributor to GDP followed by agriculture and then mining. In terms of exports, however, agriculture and mining contributed about 40% each while manufacturing contributed about 20%. More significant, agriculture produced inputs for manufacturing. Agriculture was the biggest employer of labour (Stoneman and Cliffe 1989:42). White farmers produced about 90% of the marketed food needs of the country. Except for the increased peasant production of maize and cotton, the position has not changed significantly since independence. In fact, by the end of the 1980s, manufacturing was absorbing an increasing share of output from agriculture, most of it from capitalist agriculture. The proportion of processed agricultural exports had not changed much over time, while the absolute quantities of non-processed agricultural exports had risen markedly (Riddell 1990).

The inevitable failure of government to reconcile the conflicting interests created serious contradictions and had important consequences. Productivity was emphasised while equity was de-emphasised. Sections of blacks who stood to benefit from the democratisation of the political economy embarked on accumulation in those areas where imperialist and settler capital had little interest (Sibanda 1988). Among those who embarked on accumulation were

members of the ruling party. Needless to say this exacerbated contradictions within a ruling party which was publicly committed to socialist ideology. To arrest the process of accumulation, ZANU(PF) adopted a leadership code at its 1984 Congress. The code prohibited leaders and their relatives from owning business, serving as a director of a private firm or business, receiving more than one salary, owning real estate or other property from which they could receive rents and royalties or owning more than 50 acres of land (Sibanda 1988:263). This synthetic programme failed to arrest the process of accumulation. Land acquisition occurred within the above political economy.

Meanwhile at the general political level, ZANU(PF) attempted to use its control of the apparatus of the state in order to monopolise power by creating a one-party state. At its Congress in 1984, ZANU(PF) resolved to work towards the introduction of a one-party system. The objective was not immediately realisable as a result of the constitutional clauses which entrenched the right to freedom of association and assembly. Moreover, ZAPU enjoyed support in Matebeleland as reflected by the results of the 1980 and 1985 elections. ZANU(PF), however, used the coercive apparatus of the state to weaken ZAPU. The parties signed a unity accord in December 1987. The expiry of the provisions protecting the 20 reserved white seats in 1987 seemed to pave the way for the creation of a one-party state regime. The seemingly conducive climate for the introduction of a one-party state which was created by the abolition of the reserved white seats and the ZANU(PF)-ZAPU unity accord only lasted until 1989 when a new party, the Zimbabwe Unity Movement (ZUM) was formed. The project of legislating for a one-party state was eventually abandoned in 1990 as a result of internal opposition and external pressure. The attempt to monopolise state power provides the general political climate within which reform was undertaken. It also reflects the intolerance of the regime towards alternative programmes, including agrarian ones as will be shown in below.

4.1.2 Land Acquisition Policy.

The policy of reconciliation had important implications for land reform. In the spirit of reconciliation, existing property rights in land were largely respected and protected. ZANU-PF's pre-election manifesto targeted unused, abandoned, under-utilised land and land owned by absentee landlords for acquisition. In *Growth With Equity* (Zimbabwe 1981a), the government declared one of its objectives to be the achievement of a fair distribution of land ownership. The objective was further reiterated in the *Transitional National Development Plan (TNDP)* (Zimbabwe 1982a). In the TNDP the government suggested that utilisation of arable land was 21% and 18% in the large and small commercial sectors respectively. It estimated that 4,2 million hectares, much of it in the more favourable natural regions, were unused while nearly a million hectares were under-utilised in the two sectors. The government argued that the existence of such unutilised and under-utilised land provided an opportunity for the successful attainment of the objective of equality without sacrificing growth and development of the agricultural sector. Other than proposing a land utilisation tax to ensure that unused and under-utilised land was efficiently used, the government remained silent on how unutilised and under-utilised land would be acquired.

The prolonged drought of the 1982/83 and 1983/84 agricultural seasons led to a shift of emphasis in land reform policy. The drought had serious implications for the economy in general and land reform in particular because agriculture earns a substantial amount of foreign exchange, supplies raw materials to local industry, employs a large section of the labour force, and provides food. In the context of the drought, land reform became costly and uncertain *vis-a-vis* production (Mkandawire 1985:243).

Drinkwater (1988:120) argues that as a result of the drought, growth became a greater concern than equity. The centre-piece of agrarian reform shifted from land redistribution to increasing peasant productivity.³ The shift is reflected in the government's policy documents. In the *TNDP* (Zimbabwe 1982a), the government's land policy centred on redistribution and

³ See Chapter 7 for an analysis of the reforms which were introduced in order to promote peasant productivity.

the development of land and the resettlement of a maximum number of families. By 1986, the *First Five Year Development Plan* (FFYDP) (Zimbabwe 1986d) was talking about land reform and efficient utilisation (Drinkwater 1988:124). A joint World Bank/ Zimbabwe study declared the need to safeguard large-scale commercial farming and argued that 'growth and equity' were incompatible goals (Drinkwater 1988:126).

Land reform was further influenced by short-term crisis management policies which revolved around the annual budget. Thus land acquisition came to depend on budgetary allocations. In the context of the economic problems of the 1980s, land acquisition became a hostage of measures intended to reduce budget and balance of payments deficits. For example, in 1983 funds allocated to the Ministry of Lands, Resettlement and Rural Development were reduced by 52% and the Ministry was forced to call for a one-year halt to the purchase of new land for the resettlement programme (Munslow 1985). Given the balance of payments problems, compulsory acquisition of under-utilised land was avoided as it would have involved payment in scarce foreign exchange.

4.2 Land Acquisition, Productivity and Efficiency.

The changes in land policies should be understood in the context of the economic arguments which became prevalent in the 1980s. The dominant issue became the land-utilisation rates of the agrarian bourgeoisie, with those resisting land acquisition arguing that the agrarian bourgeoisie used their land efficiently, while those who supported land acquisition and redistribution argued that their land utilisation rates were comparable to those in the other sectors (Moyo 1994). Peasant demand for land was relegated to the status of a peripheral issue.

Hence the agrarian bourgeoisie and its allies sought to shift the emphasis of land acquisition and redistribution away from issues related to the transformation of the inherited colonial relations of production to those of productivity and efficiency. Feder's (1987:532) comments on the issue of productivity and efficiency with respect to counterreform in Latin America are worth quoting at length:

Behind the exalted opinion of the legislators stands the attempt of the landed elite to shift land reform away from its goal of greater social justice to what they consider a politically neutral one of productivity and efficiency. Their reason is simple and attractive. Their alleged fear is that land reform would result in lowering output if 'large' and 'efficient' farms were to be expropriated...Hence these enterprises must be maintained and exempted from reform, even at the risk of maintaining objectionable social injustice.

The historical circumstances giving rise to the alleged efficiency and productivity of large scale capitalist farms are deliberately ignored and an impression created that these enterprises are inherently superior to others. Given that under-utilisation of land is high, it cannot be argued that all capitalist farms are efficient and productive.

In Zimbabwe, the supposed efficiency continues to be based on exploitative relations of production as is evidenced by the poor conditions of employment for farm workers and the high levels of malnutrition among their children (Loewenson 1990, 1992). Attempts by the state to introduce minimum wages in the early 1980s in order to improve the standard of living of farm workers led to a decline in employment in capitalist agriculture as the sector restructured and introduced capital intensive production processes (World Bank 1991). When the government introduced minimum wages of Z\$30 per month for agricultural workers in 1980, the poverty datum line was estimated at Z\$128 per month. By 1988 the minimum wage had been raised to Z\$100 per month for agricultural workers, while the poverty datum line had risen to Z\$320 per month (Stoneman and Cliffe 1989:125-6). Thus the productivity of large farms is based on the severe exploitation of farm workers.⁴

The ideology of 'efficiency and productivity' has been complemented by conservative anti-socialist ideologies and associated agricultural policy orientations which became influential during the 1980s (Wiener 1991). Weiner (1991:64) argues that variants of modernisation theory which suggested that black agricultural productivity was constrained by cultural and traditional factors such as emphasis on the group were 'cleverly reproduced in a series of reports which empirically documented that white agriculture was five times more productive than communal agriculture'. High-input agriculture on good land is compared with

⁴ The economic exploitation of farm workers is compounded by the fact that they are disenfranchised in terms of the Rural District Councils Act of 1988.

low-input agriculture on marginal land in order to show the low productivity of peasant farmers (Weiner 1991:64).

The efficiency and productivity arguments have found favour with state officials. Modernist ideologies associate productivity and efficiency with large farms which are supposed to enjoy economies of scale. Cliffe (1986:43) correctly argues that the size of large scale farms 'came about in a very haphazard way, partly derived from Afrikaner custom in 19th century South Africa, in part so as to deny land to Africans even if not used'. In order to maintain farm sizes, colonial law prohibited subdivision without permission. The requirement has survived decolonisation. Thus large scale farms have been retained regardless of the historical reasons for their establishment which did not include productivity. Moreover, there is evidence that the cropped average is 130 hectares out of an average farm size of 1 728 hectares in areas with good rainfall (Cliffe 1986:43). Arguments which indicate that evidence from elsewhere suggests that the efficiency of household labour invested in smaller holdings offsets the economies of scale on larger holdings have obviously not dented the modernist faith of state officials (Cliffe 1986). Hence modest reforms, such as a land tax, which would have made holding under-utilised or unutilised land uneconomic and therefore facilitated subdivision of large farms, have not been introduced.

In its opposition to land acquisition, the agrarian bourgeoisie was aided by the policies of the government which attempted to achieve growth with equity. Once the government accepted an accumulation strategy which depended on settler and foreign capital, it had to be sensitive to capital's concerns regarding stability, predictability and, above all, profitability. In the circumstances, the agrarian bourgeoisie, represented by the Commercial Farmers Union, were quick to remind the government that policies such as compulsory land acquisition would dent the confidence of whites and scare off foreign investment. As Palmer (1990:170-1) puts it:

Its basic argument, put forward regularly in the pink pages of the *Financial Gazette* and often endorsed in the British financial press, is that too rapid land reform would undermine white confidence, in both the agricultural and the business community, threaten vital export earnings of strategic crops and result in significant job losses.

Given the role accorded to foreign capital in the construction of socialism Zimbabwean style, such arguments did not fall on deaf ears. A government policy document confirms the above observation and argues that:

The commercial farmers are known to lobby heavily, under the guise of 'loss of confidence', in their bargaining encounters with Government. In the same process, the commercial farmers claim that uncertainty with respect to what might happen in future saps confidence more than any specific policy that may adversely affect them'(Zimbabwe 1987:36).

In their struggle against land acquisition, the agrarian bourgeoisie have had no less a formidable ally than imperialist interests. Munslow (1985) suggests that the economic problems of the early 1980s increased pressures from the British and United States governments on the government of Zimbabwe not to rock the commercial farmers' boat and that the IMF and World Bank similarly advised. Another imperialist strategy was to ensure that the funds promised at the Lancaster House Conference came with long strings attached to them. As argued in Chapter 3, when the British government undertook to contribute funds to a resettlement programme at the Lancaster House Conference, it never envisaged that such programme would be for purposes of restructuring the agrarian structure. The British government undertook to assist financially out of a conviction that an 'orderly and planned' programme of land resettlement would promote 'political stability' and allow people to 'normalise their lives as quickly as possible' (Cusworth and Walker quoted in Palmer 1990:168). Hence it agreed to contribute half the costs towards the acquisition of land and the development of the necessary infrastructure for the resettled farmers on condition that the government of Zimbabwe 'matched it pound for pound' (Palmer 1990:168). Other donors required the government of Zimbabwe to spend its own money before they could disburse their own funds (Zimbabwe 1989).

The agrarian bourgeoisie have had other allies. Moyo (1986) observes that since 1978 Zimbabwe's land question increasingly drew the interest of foreign organisations which funded related technical reports. These organisations were responsible for the diffusion and adoption of a neo-classical ideology as the centre-piece of national agricultural policy. Weiner (1991) suggests that under the influence of the peasant rationality school and recent calls to 'get

prices right', policy makers began to focus on ways to improve peasant yields assuming that small-scale individual farms were the optimal production scale. As a result, emphasis was placed on the efficiency of assisting progressive black farmers rather than the reorganisation of production relations.

The arguments on efficiency and productivity are usually linked with the contributions of capitalist agriculture to export earnings and the linkages between agriculture and industry. It is generally argued that economic growth depends on export earnings from agriculture and the existing linkages between industry and agriculture. As observed in Chapter 1, there are contrary arguments which question the sustainability of export-dependent growth (Riddell 1980, Robinson 1988, Mhone 1994). Moyo and Skalnes (1992) suggest that the export-led growth and expanding the internal market are not mutually exclusive accumulation strategies. They suggest that the two are complementary and cite South Korea and Taiwan as examples of countries which successfully embarked on accumulation strategies which combined land redistribution with export-led growth. The suggestion has not influenced policy because the government accepted the inherited accumulation strategy and preferred to tinker with rather than transform it.

4.3 Land Acquisition and the Law.

4.3.1 Land Acquisition 1980 -1985.

Between 1980 and 1985 land acquisition was governed by the *Land Acquisition Act of 1979* in so far as it was not inconsistent with the Constitution. The Act was enacted by the ill-fated Muzorewa government in terms of the Constitution of Zimbabwe Rhodesia and was validated by the Lancaster House Constitution. The similarities between the provisions of the Constitution of Zimbabwe Rhodesia and the Lancaster House Constitution have already been remarked upon.⁵ Given the similarities between the two constitutions, the Act was inconsistent

⁵ See Chapter 3 for a comparison of the Lancaster House Constitution and the Constitution of Zimbabwe-Rhodesia.

with the Lancaster House Constitution in minor and inconsequential respects. Essentially, both the Constitution and the Act effectively enshrined contractual modes of land acquisition which are based on individualistic legal forms.

During the first decade of independence the government's land acquisition policy stayed within the restrictive legal framework established by the Constitution. The various constraints discussed in the foregoing may, to a large extent, have been responsible for the policy direction. For example, legal ways of land acquisition which could have been relied upon without violating the letter of the Lancaster House Constitution were not utilised, presumably because the assumption was that the underwriters of the Constitution would view it as a violation of its spirit. Stoneman (1988:45) argues that during the drought of the 1982/83 and 1983/84 agricultural seasons, a high proportion of white farmers were unable to repay the Agricultural Finance Corporation (AFC) over Z\$100 million. The AFC, which is state owned, could have exercised its rights of foreclosure thus forcing the land into the market. This was not done presumably because it would have amounted to a violation of the spirit of the Constitution.⁶ In any event, the impact of the drought made the government risk-averse *vis-a-vis* land reform. Hence the reluctance to utilise legal options which would not have violated the Constitution.

There were other legal ways of acquiring land which were not utilised by the state. There was a large number of farms which belonged to the state which were on lease to the agrarian bourgeoisie in terms of the *Agricultural Land Settlement Act (Chapter 137)*. These could have been repossessed without violating the letter of the Constitution. It appears that the government took the view that while repossession might be within the letter of the Constitution, it might be viewed as a violation of its spirit. As landlord, the state respected the contractual rights of the lessees. The leases were subsequently terminated after the expiry of the entrenched constitutional clauses in an attempt to transfer them from white farmers to mostly black politicians, civil servants and influential people under a tenant farmer scheme.⁷

⁶ As indicated above, in his speech the Prime Minister elect undertook to respect the letter and spirit of the Constitution.

⁷ For a discussion of the tenant farmer scheme, see Chapter 8.

The government chose to rely on the contractual method of land acquisition which was enshrined in the Constitution. The contractual method had a number of shortcomings. Land acquisition was subject to the vagaries of the market. For example, in the first few years of independence, large amounts of land which had either been abandoned during the war, or were sold by white farmers who were emigrating, came into the market at reasonable prices. Hence most of the land was purchased between 1980 and 1984. However, as the political climate stabilised, fewer farms were offered at higher prices. Moreover, the land offered was marginal (Palmer 1990; Zimbabwe 1989). The agrarian bourgeoisie off-loaded their marginal land to the state and invested the proceeds in productive areas. There were also regional variations in land acquisition. In Manicaland province land was readily available for acquisition soon after independence as a result of the intensity of the war which had forced many farmers to abandon the land. In the Matebeleland provinces land became available for acquisition as a result of the deterioration in the security situation in the early and mid-1980s.⁸ All together, 2 780 863 hectares were acquired between 1980 and 1990 at a cost of Z\$76 164 890 (Zimbabwe 1993:10).

While contractual forms of land acquisition constrained the capacity of the state to acquire large tracts of land, they permitted those blacks with access to finance to purchase land. This was embarrassing to a ruling party which constantly legitimated itself on the basis of socialist rhetoric. The scale of acquisition was sufficient to prompt ZANU(PF) to adopt a leadership code at its 1984 Congress which purported to limit the amount of land that a leader could own to 50 acres. In practice, the leadership code was more honoured in its breach than in its observance. It has always been an open secret that party leaders, government ministers and senior civil servants own large farms. It is estimated that by 1986 there were about 500 blacks who had acquired large farms through leasehold, lease-to-buy schemes and mortgage loans from the Agricultural Finance Corporation (AFC) (Moyo 1994).

⁸ In the Matebeleland provinces, the security situation deteriorated after ZAPU was expelled from the government following the discovery of arms caches in a number of ZAPU owned properties. Some disgruntled former ZAPU guerrillas deserted the army and went back to the bush. The government unleashed the army into Matebeleland. Atrocities were committed on the civilian population by both sides.

The contractual method permitted the government to control the land acquisition process. The government preferred orderly and state-led transfers (Moyo 1994). As Moyo (1994:13) argues:

The approach sought to control land occupations by peasants or the landless, and indeed criminalised informal land occupation and the exploitation of natural resources on state and LSCF lands.

Given that the liberation of land from the agrarian bourgeoisie had been the clarion call for the peasantry to support the struggle for independence, peasant occupation of abandoned land or land which had been purchased by the state was initially tolerated. In response to peasant occupation of land, the government modified its model A resettlement scheme and introduced the accelerated model A scheme.⁹ However, the sympathy for those who took matters into their own hands by occupying land was ambivalent because it conflicted with orderly resettlement (Ranger 1985, Herbst 1990). The sympathy did not extend to cases where squatting threatened to disrupt commercial farming. In such cases squatting was met with the might of the state and the full force of the law.

Notwithstanding the government's resolve to prevent any squatting that was likely to disrupt commercial farming, there were a few instances when the state was forced to acquire the land compulsorily rather than evict the squatters. In one case, some thousand squatters in the eastern part of the country moved into the 4000 hectare farm of a Mr Oosthuizen in 1982. Oosthuizen applied to the High Court for an eviction order which was granted. The court ordered the deputy sheriff of Mutare to evict the squatters. In Ranger's words, 'at this moment such an eviction order was impossible to enforce' (1985:305). The government was forced to purchase the farm compulsorily and hence had to pay the owner in foreign currency.

A similar incident occurred in 1984 when squatters defied a court order to vacate illegal occupation and use of a white farmer's land. In the case of *Commissioner of Police v Rensford and the Messenger of Court -Gweru*,¹⁰ Rensford obtained an eviction order against squatters who were illegally occupying his farm. When the deputy Messenger of Court wished

⁹ See Chapter 5 for a discussion of the different resettlement schemes.

¹⁰ S.C 30/84.

to serve the warrant, he sought the assistance of the police. The police declined to assist on the grounds that they had received a directive not to prosecute squatters without written authority from the Minister of Lands, Resettlement and Rural Development. The Messenger of Court and Rensford jointly applied to the High Court for an order for breach of duty by the Commissioner of Police and an order that the police fulfil their duty. The High Court granted the orders prayed for and the Commissioner of Police appealed to the Supreme Court. The Supreme Court rejected her appeal and cited with approval the High Court judge's remarks that:

This kind of situation is calculated to lead to anarchical results. The system which exists in Zimbabwe for the protection of rights does not recognise the taking of the law into one's own hands. If inadequate machinery existed in Zimbabwe for the enforcement of proprietary rights, there would be the danger of individuals seeking to protect their rights by violent and uninhibited means.¹¹

This was undoubtedly a robust defence of private property rights by the Supreme Court.

In the wake of the Supreme Court decision, the government enacted the *Emergency Powers (Resolution of Disputes Over Occupation of Rural Land) Regulations* SI 243A/1984. The Regulations gave the state the right to purchase privately owned land which had been occupied by squatters for more than five years. The relevant provisions of the Regulations provided that:

Where the Minister, after due investigation has reason to believe that-

- (a) any person is liable to be or is threatened with eviction from any rural land which he (sic) has occupied for a substantial period of time which period shall not be less than five years; and
- (b) undue hardship will be caused to the person if he (sic) were to be evicted in the circumstances; and
- (c) it is necessary or desirable in the public interest of peace, order and good government to do so;

the Minister may...issue a certificate authorising that person, for so long as the certificate remains in force, to continue to occupy that rural land or any portion thereof (section 3(1) (a), (b) and (c)).

In the event of the Minister invoking the provision, the owner of the land was required to negotiate with the government the amount of compensation she was entitled to receive. Once the compensation was paid, the squatters remained on the land as tenants of the state

¹¹ See page 5 of the cyclostyled copy of the judgment.

and the Minister could impose any conditions on them and could also demand the payment of rent (section 10(1)). Thus in the event of the compulsory acquisition of the land, the relationship between state and the occupants became a property relation - the state became the landlord while the occupants became quasi-tenants with limited rights, if any. The state was forced to acquire the land compulsorily for public policy reasons.

In the two incidents, the peasants forced the state to invoke the law on compulsory acquisition of land. However, government tolerance of squatters was very limited. The government felt that the accelerated resettlement programme was an earnest show of their intention to fulfil their debt to the peasantry and felt that controlled schemes would ultimately be more productive, better conserve the land, and more effectively prevent inequality (Ranger 1985). Hence in 1982 the Deputy Minister of Lands announced that all squatters should vacate all the land on which they were living and declared 25 January 1983 as the deadline for such evictions.¹² Henceforth the sanctity of property was affirmed and squatters tasted the full wrath of the law when the police were used to forcibly evict them from privately owned farms.

The state's intolerance of self-help forms of land acquisition was demonstrated in the case of *Matthew Makanyanga and Others v The Forestry Commission*.¹³ Between 1980 and 1983 the appellants moved into a forest area which they claimed was their traditional home. They claimed that they had moved away from the area of their own accord in 1959. The area had been declared a forest area in terms of the *Land Apportionment Act*. The appellants claimed that in 1984 the Governor of the province had told them to regard the place as their home, and that in 1985 she had written to them to say that the government had changed its policy about their stay in the area and would find them a suitable place where they could resettle. In 1986 while they were waiting for the government to allocate them alternative land, employees of the Commission started planting trees in the appellant's fields. The appellant cut down the trees in order to protect their crops. They were charged with unlawful destruction of

¹² In a speech at the Commercial Farmers' Union Conference quoted in Weiner (1988 footnote 39) the Minister of Agriculture, Mahachi, said 'Let me assure you, the elections are over ... the honeymoon is over. We don't want anyone twisting the arm of government and we will be acting vigorously against squatting'.

¹³ S.C. 1/91.

the Commission's property. They were acquitted by the Supreme Court. The Forestry Commission applied to the High Court for their eviction. The application was granted and the appellants appealed to the Supreme Court.

The decision of the Supreme Court turned around the issue of ownership. The Court decided that the Commission owned the land and that the applicants were in illegal possession of it. The argument of the appellants that the Commission had not properly acquired the land was dismissed. The Court argued that the land was declared as designated forest land in terms of the *Land Apportionment Act* of 1958, and remained so under the *Land Tenure Act* of 1969. When the *Land Tenure Act* was repealed, the land remained forest land in terms of the *Forest Act*. The case demonstrates that land acquisition on the basis of historical grievances was discouraged. The law protected property rights in land that had been created by colonial laws which, before 1980, had mobilised peasant support for the liberation struggle. The state was thus unwavering in its defence of private property rights in land. In the words of Moyo, (1994:8) the state:

has been steadfast in its defence of the property rights of large farmers throughout the post-independence period. Squatters were regularly and forcefully evicted from LSCF and state lands, while unsanctioned grazing and the use of natural resources in LSCF areas as well as cattle rustling were strongly dealt with by the state and the law.

The sanctity of private property has been so well respected that the land utilisation tax proposed in the TNDP is yet to see the light of day. It is within this context that the *Land Acquisition Act* of 1985 should be understood and appreciated.

4.3.2 The Land Acquisition Act of 1985.

The *Land Acquisition Act (No. 21 of 1985)* (the Act) repealed the *Land Acquisition Act of 1979*. The Act closely followed the provisions of section 16 of the Constitution and thus reproduced the provisions regarding the purposes for which land could be compulsorily acquired (section 3). An important point to note is that the Act did not define under-utilised land which could be acquired for settlement for agricultural purposes. All it provided was that

in the event of a dispute as to whether the land was under-utilised, the courts were to have regard to the suitability of the land for agricultural purposes; whether it had been substantially put to use for such purposes for a continuous period of at least three years immediately prior to the date of the application for the order; the extent of development in the neighbourhood or adjoining district and any other matters as the court might consider appropriate (section 14(2)). The matter was therefore left to the discretion of the court.

An innovation which the Act introduced was the concept of the right of first refusal in respect of rural land. A person wishing to sell land was enjoined to offer it to the Minister before offering it to any other person. If the Minister indicated that the state had no interest in the land by issuing a 'certificate of no present interest', the owner could then sell it to the person of their choice (6(2)). Through the right of first refusal, the state attempted to exploit the contractual method which was enshrined in the Constitution by ensuring that all land offers were first made to it.

The Act established a detailed land procedure, which, in Ng'ong'ola's words (1992:133), 'could not be described as simple and expeditious'. A compulsory acquisition was to be initiated by the publication of a preliminary notice of compulsory acquisition which had to be served on all interested parties; had to describe the nature and extent of the land to be acquired; the purposes for which it was to be acquired; and had to call upon interested parties who disputed the acquisition to lodge their objections with the authority within thirty days of the date of publication of the notice. The notice was also required to call upon any person wishing to claim compensation to submit a claim. In the event of a disputed acquisition, the acquiring authority was obliged to apply to the Administrative Court for an authorizing or confirming order (section 13).

The Act (section 19(1)) laid down guide-lines for the assessment of compensation. Any person wishing to claim compensation was required to submit a written claim specifying the nature of the loss or deprivation of rights, the amount of compensation claimed and the basis of its computation (section 19(2)). Any dispute relating to the amount of compensation had to be referred to the Administrative Court (section 20(1)). In assessing adequate compensation, the Act enjoined the Court to endeavour to arrive at compensation which was

fair and reasonable having regard to the right of the claimant to be paid compensation for the land, materials, interest or right in the land concerned and the general public interest in the acquisition (section 22(2)).

It is not clear whether the 'fair and reasonable' compensation standard which was provided in the Act was synonymous with the 'prompt and adequate' standard set out in the Constitution. There is no case authority on the issue of compensation for land which was compulsorily acquired by the state. In fact, there is no case authority on the interpretation of any of the provisions of the *Land Acquisition Act*. What this suggests is that the state hardly relied on the compulsory acquisition procedure. If it did, it either paid the going price or was able to negotiate an acceptable price in all cases. In interpreting the constitutional requirement of 'prompt and adequate compensation' in a case which did not involve the compulsory acquisition of land, the Supreme Court of Zimbabwe argued that the compensation:

must be 'sufficient' to compensate the owner for the loss of property without imposing an unwarranted penalty on the public because the acquisition is effected in the interest of the public or community. The interest of the owner of the property acquired must of necessity be balanced with the interest of the public from whom the money paid in compensation comes.¹⁴

Thus, had cases involving compulsory acquisition of land been brought before the Supreme Court, it would have interpreted the Constitution and/or the Act in a manner that balanced the interests of the owner against those of the public.

Both the Constitution and Act No. 21 made provision for the compulsory acquisition of derelict land (section 16(7)(g) of the Constitution and parts V and VI of the Act). Part V of the Act dealt with the setting up of a Derelict Lands Board which was tasked with determining whether or not land was derelict, while Part VI dealt with the procedure and grounds for determining whether land was derelict. Once the land was declared derelict, the President could acquire it without paying compensation.

¹⁴ May and Others v Reserve Bank of Zimbabwe 1986 (3) SA 107 at p. 119

4.2.3 The Land Acquisition Act: An Evaluation.

As indicated in the foregoing, the *TNDP* suggested that there were large amounts of unutilised and under-utilised land in the capitalist agricultural sector. However, the extent of under-utilisation has never been determined. There is a general acceptance that land in capitalist agriculture is under-utilised. There is, however, no consensus as to the extent of under-utilisation. According to Weiner et al (1985) only 34% of the prime arable land in the three provinces of Mashonaland is utilised. On the other end of the spectrum of opinion, a study by Hawkins Associates on behalf of the World Bank suggested that the utilisation of arable land ranged between 58% and 128% in the five of the six intensive conservation areas they assessed in the country's main cropping region (World Bank 1991). At the end of the first decade of independence, the World Bank (1991) suggested that about 3 million out of 11,2 million hectares of land owned by the agrarian bourgeoisie was under-utilised.

The government did not make attempts to establish how much land was under-utilised. While acknowledging that a great proportion of the land was under-utilised in terms of its physical potential, the government argued that the major problem with instituting a system of acquiring under-utilised land is that there is no 'generally acceptable criteria for defining the expected land use capability of the existing different classes of land in order to facilitate the determination of under-utilisation' (Zimbabwe 1989:61). While the complexity of determining whether land is under-utilised cannot be underestimated, the sheer complexity alone does not adequately explain why very little attempt, if any, was made to determine the extent of the under-utilisation. An attempt to establish the criteria for under-utilisation was made in 1979 by the Ministry of Finance of the government of Rhodesia (Zimbabwe 1989:61). If the will had been there, the criteria developed by the Rhodesians could have been used as a starting point. As has been argued, in the context of budget and balance of payments disequilibria, compulsory acquisition of under-utilised land would have involved financial outlays in foreign exchange. As far as the government was concerned, this was not an option. This explains why under-utilised land was not defined in the *Land Acquisition Act*. The determination of whether land was under-utilised was left to the judiciary which was given vague guidelines. In any

event, there is no evidence that the provisions of the Act relating to compulsory acquisition of under-utilised land were ever used.

As far as the government was concerned, the most important parts of the Act were the provisions relating to the right of first refusal which put the state in a position of a monopoly buyer. The procedure reflected the government's desire to stay within the letter and spirit of the Constitution. It amounted to the manipulation of the contractual method of land acquisition which was enshrined in the Constitution. The procedure, however, did not resolve the budgetary constraints. Hence, many offers of land which were made to the state in terms of the Act were not accepted (Zimbabwe 1989:44). Moreover, the procedure, based as it was on the willing seller-willing buyer concept, did not give the state the freedom to purchase land in large blocks to facilitate planning. Attempts to introduce a system of land designation which would have given the state power to designate large blocks of land for acquisition were abandoned during debates on the Land Acquisition Bill when it was realised that the proposed procedure would have contravened the Constitution (Zimbabwe 1989:59). The right of first refusal may, however, have facilitated the acquisitive tendencies of government ministers and senior civil servants who now knew which land was on offer. Commenting on the right of first refusal, Palmer (1990:170) observes that 'A significant number of farms, totalling well over one million hectares, changed hands in this way, many to senior members of the government and the new ruling elite'. It may be safely argued that, other than the right of first refusal (the efficacy of which is debatable), the Act was largely symbolic.

Conclusion.

This chapter has examined constraints within Zimbabwe's political economy which impinged on the transformation of social relations of production in general and the agrarian structure in particular. It has shown that there was an interplay between constitutional and other constraints in the shaping of land acquisition policy and law. While the constitutional constraints determined the contractual method of land acquisition, there were other constraints which determined the general direction of land reform.

The chapter has argued that law and state re-enforced existing property relations. The state protected private property rights in land and sought to direct the process of land acquisition. It demobilised attempts by the peasantry to gain access to land outside procedures established by the state. Hence the favoured method of land acquisition became the willing seller - willing buyer method which was entrenched in the Constitution. Law for its part was Janus-faced. On the one hand, it was authoritarian in its dealings with squatters who were disrespectful of the sanctity of private property rights, while on the other, it permitted members of the new ruling class to acquire property rights in land.

Despite the constraints on land acquisition, about three million hectares were acquired through the willing seller - willing buyer method during the first decade of independence. The land acquired by the state was redistributed to the peasantry. The methods of redistribution and the legal issues they raise are the subject of the next chapter.

CHAPTER 5.

LAND REDISTRIBUTION 1980-1990.

Introduction.

The last chapter examined the acquisition of land for redistribution during the first decade of Zimbabwe's independence. As argued, while land acquisition and redistribution are interlinked, they raise fundamentally different political and legal issues. While the land redistribution exercise was constrained by a number of factors, for example financial and logistical constraints, they were qualitatively different from those on land acquisition. Once the land had been acquired, the post-colonial state had a free hand in designing a reform sector within the agrarian structure. The land redistribution exercise is thus significant in that it represents agrarian relations of production and land tenure systems which were created in the post-colonial period. More than any other agrarian reform programme, the resettlement programme can be used as a yardstick to measure the nature and character of post-colonial attempts to reform the colonial agrarian structure.

The aim of this chapter is to analyse the redistribution of land during the first decade of independence. The centre-piece of the land redistribution exercise was the resettlement programme. Hence the chapter examines the objectives of the resettlement programme, with particular emphasis on their implications for the relations between the state and the resettled farmers. It shows that the resettlement programme combined political, social and economic objectives. The chapter argues that the state emphasised economic objectives which were conceived of as technical development over social and political objectives. It also argues that technical development represents attempts to modernise peasant agriculture through technocratic methods.

In addition, the chapter demonstrates that the objectives of the resettlement programme have implications for the nature and character of laws regulating the land redistribution exercise. It argues that as a result of the emphasis on technical development, the laws regulating the resettlement programme are instrumentalist and functionalist in character. In order to facilitate technical development, the laws give wide discretionary powers to

administration and impose obligations on the resettled peasantry. Furthermore, the chapter shows that the technocratic objectives of the programme determined the land tenure systems that were created in the resettlement areas. It argues that land tenure systems are not simply about relations between people and land. Rather, they also reflect relations between the state and landholders. Thus, the significance of land tenure systems which were created in the resettlement programme is that they reflect relations between the post-colonial state and the resettled farmers.

Finally, the chapter examines the nature of social relations of production which have been created within the resettlement areas with particular emphasis on gender relations. While the other sections focus on the relations between the state and the resettled farmers, the last section analyses social relations amongst the farmers. It focuses on gender relations because small scale agriculture is based on family labour. It shows that permits are issued in the name of the male spouse as the head of the household. It argues that the resettlement programme reproduces household patriarchal relations of production.

5.1 The Resettlement Programme.

5.1.1 Targets and Resettlement Models.

The resettlement programme was launched in September 1980 with a target of resettling 18 000 peasant families on 1,1 million hectares of land acquired from the white agrarian bourgeoisie over a period of three years. At the Zimbabwe Conference on Reconstruction and Development (ZIMCORD) in March 1981, the target was increased to 54 000 families to be resettled over a period of three years. Progress was, however, slow with only 6 400 families resettled by the end of January 1982 (Bush and Cliffe 1984). Despite the slow progress, the *TNDP* raised the target figure to be resettled to 162 000 families to be resettled over 9 million hectares between 1982 and 1985. By 1985 only 35 000 families had been resettled. In the circumstances, the *First Five-Year National Development Plan* (FFYNDP) (Zimbabwe 1986d) which covered the years 1986-90, set new resettlement targets of 15 000 families per year. By 1990, only 52 000 families had been resettled on 2 847 102 million hectares of land.

The intended beneficiaries of the programme were the rural poor. As originally conceived, beneficiaries had to be effectively landless; unemployed; poor; married or widowed with dependants; aged between 18 and 55 years; prepared to forego all land rights in the communal areas of origin; or returned Zimbabwean refugee. These were later revised in 1984/85 when concern was expressed that the criteria resulted in the allocation of scarce resources to those least able to utilise them. Under the new criteria, experienced and master farmers willing to forego all land rights in the communal areas were also allowed to apply.

The programme has been implemented on the basis of four resettlement models; A, B, C and D. The model A scheme comprises an intensive, nucleated village settlement with individual smallholder arable units and communal grazing areas. In response to peasant occupation of vacant land in the early 1980s, the government modified the model A scheme and introduced an accelerated version. The difference between a normal model A scheme and an accelerated one is that the latter is implemented without the infrastructure and services which are provided under the former.¹ Model B is an intensive co-operative settlement with communal living. Model C combines individual smallholder production with a centralised estate which provides services in exchange for labour. Model D is a later addition which caters for extensive livestock grazing in the drier parts of the country. All the schemes, except the accelerated model A, are designated as 'intensive' not because of the farming operations which are undertaken, but because of the planning of and expenditure on infrastructure which precedes resettlement.

Consonant with the post-colonial statist and bureaucratic approach to policy making, the resettlement models were designed without popular participation. Consequently, regional variations were not taken into account in designing the models. For example, the Model A scheme was designed for the whole country despite the fact that the dry south-western provinces of Matebeleland are suitable for ranching rather than crop agriculture. When the peasantry in Matebeleland rejected the scheme and demanded one which addressed their needs

¹ As indicated in Chapter 4, the accelerated model A scheme was introduced in response to peasant occupation of land (squatting). In this respect, it is similar to the Haraka settlement schemes of Kenya (Hazlewood 1985).

as cattle farmers, the government initially interpreted the rejection as ZAPU inspired opposition to the resettlement programme (Ranger 1985, Alexander 1991). The government eventually designed the Model D scheme which addresses the needs of cattle farmers.

The most popular scheme has been the Model A with 40 727 families resettled on 2 437 360 hectares out of a total 2 847 102 hectares committed to resettlement up to 1993. Model B schemes have been allocated 136 793 hectares of land to be settled by 6 594 families. Only 3 067, that is 66,51% of planned capacity, had been resettled by 1993. Model C schemes have been allocated a total of 12 949 hectares to be settled by 827 settlers. By 1993, 470 settlers, that is 56,53% of planned capacity, had been resettled. Model D schemes occupy 403 600 hectares (Zimbabwe 1993).

Overall, land redistribution has been complicated by the fact that it involves the relocation of the beneficiaries of the programme. Unlike reforms in situations where agrarian relations are synonymous with landlord/tenant relations and where land reform involves the transfer of title to land to tenants who are already working the land, the resettlement programme in Zimbabwe not only involves relocating the beneficiaries but also requires the provision of services. As a result, land redistribution has been very costly.

According to the government, a number of constraints contributed to the failure to meet the targets of the programme. The government argues that constitutional constraints and the cost of land under the willing seller - willing buyer basis militated against the achievement of the resettlement targets (Zimbabwe 1989). The government has also blamed the global recession and the prolonged drought of the 1982/3 and 1983/84 agricultural seasons for the failure to meet the targets. In addition, the government has argued that it had insufficient trained staff for planning and implementing a programme of the magnitude of the resettlement programme (Alexander 1994:335). While there is a grain of truth in the arguments, the major reason is that the targets were set at levels which were not supported by detailed plans and budget allocations (Herbst 1990). Furthermore, as Alexander (1994:335) correctly points out:

recession inspired cuts in the resettlement programme were far deeper than those in other redistributive programmes; while land did become scarce, the government failed to purchase much of the land that was on offer, even when it met its criteria for resettlement; the shortage of trained staff was in part a self-

imposed constraint which reflected the government's unwillingness to adopt less elaborate methods of redistributing land

As argued in Chapter 4, after the prolonged drought of the 1982/3 and 1983/4 agricultural seasons, the government became risk-averse with regard to land reform. Emphasis shifted away from land redistribution towards improving productivity. The programme was also handicapped by technocratic and bureaucratic methods of land redistribution. Nineteen ministries and/or government departments were involved in the planning and execution of the programme (Zimbabwe 1993). MacGarry (1994:28-9) compares a resettlement scheme with a recently settled adjacent communal area and shows that the results are similar. In other words, the results could have been achieved with less technocratic planning and expenditure. Moreover, as the next section shows, the confusion surrounding the objectives of land redistribution partly accounts for the manner in which the programme was implemented.

5.1.2 Programme Objectives.

Agrarian reform programmes invariably combine political, economic and social objectives which need to be articulated with each other if conflict is to be avoided. The weight which the state attaches to different objectives in particular settings is dependent upon political, economic and social pressures. In 1980 the agrarian question was a highly politicised issue as peasant landlessness and overcrowding required immediate redress. For the peasantry the war had been about liberating the land from the settler minority, and the victory of the nationalist parties in the 1980 elections heralded the realisation of this objective. As a result, large numbers of peasants all over the country occupied vacant land.² Hence the immediate objectives of the land redistribution programme addressed the political aspects of the agrarian question.

Agrarian reforms arise out of a change in the balance of power in society, and the nature of the change in power relations determines the nature of agrarian reforms (Sobhan 1993:4). The political objectives of land reform depend on the forces and pressures that have

² Ranger (1985) and Herbst (1990) give excellent accounts of peasant occupation of land.

created the opportunity for land reform to be considered, and whether a revolutionary change in political power is involved (Ellis 1992:198). As argued in Chapter 3, in Zimbabwe the transition to independence did not involve a revolutionary change in political power. Notwithstanding the absence of a revolutionary change in political power, the people who had fought for independence had great expectations for the transformation of the inherited political economy and its social relations. Land reform tried to address the great expectations of the majority regarding land redistribution within the restrictive context. In the circumstances of the structural and conjunctural constraints discussed in the last chapter, the new government saw the political objectives of land redistribution as the neutralisation of the crisis of expectation on the part of those in need of land (Zimbabwe 1981c:124). The resettlement programme 'was a political programme that allowed the Government some breathing space'.³ From the government's point of view, the primary political objective of the resettlement programme was to stabilise the existing social relations. Hence land reform was viewed as a legitimating rather than a transformative strategy. Thus, squatting was tolerated in the first years of independence as part of the process of stabilising social relations. Hence the government argued that illegal migration 'poses a serious threat to an orderly, equitable and rational settlement programme' (Zimbabwe 1981c:37). Land redistribution was therefore strictly controlled by the state.

As already suggested, the resettlement programme also addressed social and economic objectives. Its social objectives emphasised poverty alleviation while its economic objective emphasised the improvement of productivity (Zimbabwe 1983,1985). According to the *TNDP* (Zimbabwe 1982a) the resettlement programme was an important element of the strategy of growth with equity and transformation. The social objectives were therefore intended to address issues of equity, while the economic objectives were intended to address issues of growth. Since the political objectives did not contemplate the transformation of the agrarian structure, the social and economic objectives were designed to ameliorate poverty and

³ This statement was made by the Minister of Lands, Agriculture and Rural Resettlement during the second reading of the Land Acquisition Bill in 1992. See Zimbabwe Parliamentary Debates Vol.18 No.61 Col. 4414, 12 march 1992.

improve productivity within the *status quo*. In the circumstances, there were no clear connections in the different objectives of land redistribution.

While the equity objectives of the programme were to be achieved through the settler selection criteria which focused on the very marginalised sections of rural society, the economic objectives were to be achieved through state management and regulation of the resettlement process. As argued below, the land tenure system was used as a vehicle for state management and regulation of the resettlement process. In other words, the intention was to manage and regulate the resettled farmers so that they would produce surpluses. The government argued that the resettlement areas were special areas which needed intensive management in order to achieve the stated goals and objectives (Zimbabwe 1983,1985). As Alexander (1994:333) correctly argues, the government worked on the ahistorical assumption that the peasantry were subsistence oriented and therefore incapable of producing marketed surpluses without strict state regulation and planning. Chapter 1 has shown that the peasant social relations of production are not traditional. At the Zimbabwe Conference on Reconstruction and Development, the government argued that the resettlement areas were not to be extensions of subsistence farming. Rather, the resettled farmers were to be productive commercial farmers (Zimbabwe 1981c:124).

Thus as regards productivity, the resettlement programme was conceived of as a project for modernising peasant production processes. The view was that, if left to themselves, the resettled farmers would engage in traditional farming methods which were not only incapable of producing marketed surpluses, but would also lead to a degradation of the land. Nkomo, while not writing in an official capacity, typified the dominant thinking within official circles when he argued that:

But the wasteful farm practices that have been encouraged in the communal areas would soon destroy that precious asset ...(1984:250).

He further argued that:

New settlements in the commercial areas must be real, productive farm communities - not scattered huts, uncontrolled grazing and loose dogs on the run, but planned villages, fields and paddocks carefully laid out to get the most from the land (1984:251).

Thus in the resettlement areas, the perceived peasant traditional farming methods were to be modernised and transformed through strict state management and regulation. Hence the farmers were given a target income and allowed loans only on condition that they plant a specified acreage of cash crops (MacGarry 1994:29). In the wake of the prolonged drought of the early 1980s, the emphasis on productivity was intensified.

In order to achieve productivity, resettled farmers were required to forego alternative employment opportunities.⁴ As part of the modernisation process, the state sought to create a peasantry which would not reproduce itself on the basis of a combination of agricultural production and wage labour. The assumption was that worker-peasants under-utilised land. As Chapter 1 has argued, remittances from wage labour play an important role in the reproduction strategies of different peasant households. While some households cannot reproduce themselves without wage labour remittances, others use the remittances for investment in agriculture.⁵ Since the beneficiaries of the programme were the poorest of rural society, the requirement to give up urban employment denied them necessary investment opportunities.

The resettlement programme is a typical example of what Bernstein (1990b:6) calls agricultural modernisation. Agricultural modernisation is conceived simply as technical progress - the growth of output and productivity. However, technical progress is connected with commoditisation: the process of the development of commodity production, markets and divisions of labour (Bernstein 1990b:6). It is not suggested here that the government should not have emphasised productivity. Indeed, most land reform programmes emphasise productivity as one of the objectives (Ellis 1992:199, Dorner 1972:19, Thiesenhusen 1989:1).⁶ What is at issue are the ahistorical assumptions regarding the peasantry and the consequent

⁴ See the discussion below on the terms and conditions of the permits.

⁵ See Bush and Cliffe (1984) for a critique of strategies which attempt to cut the nexus between wage-labour and peasant agriculture. See also Cousins et al (1992).

⁶ Thiesenhusen argues that land reform is a form of affirmative action. It is a policy by governments in agrarian countries to distribute land which is a major source of employment. He suggests that, in addition to equity and justice, there is the thought that the new landholders are able to produce as much as the former occupants of their positions.

technocratic and bureaucratic policies designed to increase productivity. The environmental and economic problems of peasant agriculture were seen as inhering in traditional social relations and methods of production rather than as products of discriminatory and oppressive colonial agrarian policies. That the environmental and economic problems were a product of colonial agrarian policies was conveniently overlooked. Hence the attempt to modernise perceived traditional production processes through technocratic methods.

The political issues relating to the redress of colonial dispossession gave way to economic arguments (Moyo and Skalnes 1990:4). The management ethos which characterised the post-colonial state de-emphasised political issues and emphasised economic development. The programme emphasised productivity over other objectives contrary to the arguments of the Comptroller and Auditor-General (Zimbabwe 1993:13) that it ranked socio-political considerations higher than the longer term economic/production considerations and that there was a bias towards subsistence farming rather than commercial farming. If the objectives of productivity were not realised, it is for other reasons other than failure to emphasise them. In any event, the resettled farmers in the better agro-ecological regions were able to meet and surpass the income targets which had been set for them (Zimbabwe 1993). If ever any evidence was needed that peasant productivity is not constrained by traditional farming methods but by lack of means of production, the performance of Model A schemes in the better agro-ecological regions provides ample evidence (Cusworth and Walker 1988). The point to emphasise is that the state focused on productivity. In fact after the severe drought of 1982-84, productivity took precedence over other objectives. As the next section argues, the tenure system and the consequent relations between the state and resettled farmers testify to the emphasis on productivity.

While the state emphasised productivity, it did not provide adequate support for Model B schemes which, as a result, have been a failure despite the good infrastructure and good quality land at their disposal. The oft-cited problem facing Model B schemes is the lack of supporting resources such as working capital (Stoneman and Cliffe 1989, Zimbabwe 1993, Bruce 1990). Only 27,66%, that is, Z\$3 955 421 out Z\$14 301 350, budgeted for their establishment grants had been disbursed by 1993 (Zimbabwe 1993). Insufficient assistance was

given to the settlers who, in addition to the lack of capital and other resources, lacked technical and organisational skills. Hence by 1990, land utilisation rates in Model B schemes ranged from 14% to 33% and most of the schemes were heavily indebted to the AFC (Zimbabwe 1993).

5.2 Legal and Political Aspects of the Resettlement Programme.

5.2.1 Law and Land Tenure in the Resettlement Areas.

Land redistribution programmes usually involve the creation of new land tenure systems for the beneficiaries of land reform. A government embarking on land reform has a number of tenure systems from which it may choose. Beneficiaries of land reform may be granted full ownership rights either as individuals or families or co-operatives. Rights may be granted subject to the payment of full or part consideration for the land. Alternatively, the state may retain ownership of the land and the beneficiaries may be granted leases. The choice of a tenure system expresses and reflects the objectives which the redistribution exercise is intended to achieve.

The Zimbabwean government chose to retain ownership of the redistributed land and to issue the beneficiaries of model A and B schemes with a set of permits, and those of model C schemes with leases. Since ownership of the land vested in the state, the beneficiaries were not required to pay any consideration for the land.⁷ The rationale for retaining ownership is that the government has invested a great deal of resources in the resettlement programmes and that it would not be in the national interests to allow uncontrolled free-for-all access to the land as this could lead to degradation. An additional reason is that the resettlement areas are special areas which need intensive management in order to achieve the stated goals (Zimbabwe 1983,1985).

The permits and leases are issued in terms of inherited colonial legislation. While the government was free to enact its own legislation which would have given juridical form to the

⁷ In Kenya settlers acquired title to the land and therefore had to pay for it (Hazlewood 1985).

resettlement programme, it chose to rely on two inherited pieces of legislation: the *Agricultural Land Settlement Act (Chapter 137)* and the *Rural Land Act (Chapter 155)*. The *Agricultural Land Settlement Act* was originally enacted by the colonial government in order to provide a legal framework for the settlement of white immigrants who were encouraged to settle in Zimbabwe after the Second World War. The objectives of the Act are, *inter alia*, to provide for the settlement of persons on, and the alienation of agricultural land. It makes provision for the establishment of an Agricultural Land Board whose functions and duties are to consider and report upon all applications for leases of holdings; to select and recommend applicants for leases of holdings; and to do such other things as are consistent with the provisions of the Act (section 5).

The Act authorises the Minister to establish schemes or make other provision for the settlement of persons on and the alienation to such persons of agricultural land; the training of persons in farming; the development of the farming industry; and objects incidental to and connected with any of the above objects (section 5). The Minister is authorised to issue leases to applicants in respect of the holdings of land (section 11). She is, however, prohibited from issuing a lease unless the application for settlement has been submitted to the Board for its consideration and report (section 12). The factors to be considered by the Board are the age of the applicant; the character and legal competence of the applicant to hold, acquire and farm the holding; whether the applicant possesses the qualifications and the capital necessary to make proper use of the holding, having regard to the purposes for which it is proposed to be alienated; and any other facts which, in the opinion of the Board, are relevant to the individual applicant or the holding (section 13(a)).

A lease issued by the Minister may contain an option to purchase the holding and has to be on such terms and conditions as the Minister may fix (section 14). It may be terminated by the lessee subject to a three months notice, and may be cancelled by the Minister for failure to comply with its terms and conditions (section 20). No compensation is payable for improvements that may have been made during the subsistence of the lease. The Minister may make an *ex gratia* payment to the lessee in respect of the improvements, or may permit the

lessee to remove any improvements within three months of the termination of the lease (section 22).

There was an obvious conflict between the resettlement programme objectives and the settler selection criteria on the one hand, and the factors to be considered by the Land Settlement Board in the exercise of its functions in terms of section 13 of Chapter 137 on the other. While the resettlement programme objectives and the settler selection criteria were intended to benefit the rural poor with no access to means of production, the factors to be considered by the Board are intended for the benefit of those with qualifications and capital necessary to make proper use of land. For this reason, Chapter 137 did not provide an appropriate legal framework for the resettlement programme in general. More important, leases would have given the beneficiaries limited rights which would have conflicted with and constrained the government's objectives of managing and regulating the resettlement programme.

The Act only provided a framework for model C schemes which have been very insignificant in terms of the land redistributed. It has recently emerged that during the first decade of independence the government also employed the Act to lease out state farms to the aspiring black agrarian bourgeoisie.⁸ These were blacks who benefited from the democratisation of social relations after independence. What is worth noting is that the state employed the contractual form in alienating land to the would-be black agrarian bourgeoisie. The contractual form mediates exchange relations between commodity producers as equal juridical subjects who relate to each other in terms of the property they own and the concomitant rights they possess. In the case of a lease between the state as landlord and the lessees, the significance of the contractual form is that it regulates the exercise of the power of the state as landlord by recognising and institutionalising the rights of the lessees.

The *Rural Land Act (Chapter 155)* provided the state with the desired legal framework for the strict management and regulation of the resettlement areas. The relevant provisions of

⁸ See Chapter 8 for a discussion of the leasing of land to the black bourgeoisie and petty bourgeoisie.

the Act for the resettlement programme are those which permit the Minister *'to lease, sell or otherwise dispose of State land for such purposes and subject to such conditions as she may determine'* (section 6); and those which prohibit subdivision (Part II). The government preferred the discretionary powers conferred on the state by the words *'lease, sell or otherwise dispose ...'* to leases which would have imposed duties. The state has relied on section 6 of the Act for purposes of resettling persons in Model A and B schemes.

In model A resettlement schemes, access to and use of land is based on three permits; a permit to reside, a permit to cultivate, and a permit to depasture stock. As Bruce (1990:35) observes, all three permits *'state broad rights on the part of the Ministry but remarkably few rights for the permit holder'*. In terms of the permits to reside and cultivate, the Minister may at any time and without notice replace the permits with some other form of agreement on such terms and conditions as she may determine; may at her sole discretion revoke the permit if she decides that the holder has failed to comply with any of its terms and conditions; may revoke the permit for any public purposes at any time and under such conditions as she thinks fit on payment of such compensation as she may determine.

In terms of the permit to reside the holder may only use the site for residential purposes for her own accommodation and that of her family only. She has to pay all rates, taxes or other charges which may be levied on the site by competent authority; and she is not permitted to carry on any trading, commercial or industrial operations on the site. No compensation is payable for improvements on the expiry or revocation of the permit. The holder is, however, entitled to remove the improvements within three months of the revocation of the permit.

The permit to cultivate enjoins the holder to use the land solely for agricultural purposes for her own exclusive benefit, and the holder has to personally, actively and continuously carry on agricultural activities on the holding to the satisfaction of the Minister. She has to comply in all respects with the provisions of, and the regulations made under the Natural Resources Act, the Animal Health Act, the Noxious Weeds Act, and all other laws relating to soils husbandry, farming practices and livestock management, and the instructions which the Minister may issue on the same issues.

During the currency of the permit the holder has to renounce and forgo all rights to cultivate any land or depasture cattle in any communal area. She is also prohibited from constructing or erecting any building or other structure on the holding. In addition, she is prohibited from engaging in any other occupation or employment without the consent of the Minister. She cannot carry on any trading, commercial or industrial operations on the land. The permit to depasture stock is couched in similar terms as the other two.

With regard to Model B schemes, access to and use of land is also regulated by two permits issued by the Minister along the same lines as the model A permits. The first is a permit to occupy land which is issued to the co-operative. The terms and conditions of occupation are similar to those of the permit to reside in model A schemes. In addition to the grounds for revocation which are similar to those in the model A permit, the Minister may revoke the permit if she decides that the holder has failed to make proper, beneficial use of the land; that the holder has ceased to be registered as a co-operative society in terms of the law; that the financial affairs of the holder are such that the holder is no longer able to pursue the objects set out in its by-laws; and that the number of registered members of the co-operative has fallen below fifty. As with the Model A permit to occupy, the permit makes it obligatory to comply with certain laws relating to husbandry and cultivation. The duration of the permits is not specified. In both schemes, the three permits are interlinked and a breach of conditions of one permit automatically triggers the revocation of the other two permits (Chinamasa 1994:12).

The law regarding the resettlement of peasants on Model A and B schemes is authoritarian both in its form and content. The permit system is a good example of a law which confers unrestricted discretionary powers on administration and imposes obligations on citizens without conferring rights. It is a rightless law. The relationship between the state and the resettled peasants is a property relationship since the state retains ownership of the land redistributed. As a result, the resettled farmers are quasi-tenants of a kind whose relationship with the landlord state is regulated through a rightless permit system. The provisions of the permits are couched in commandment-style language of 'thou shall or thou shall not' do certain things. There are no procedural safeguards for the protection of the permit holders

from the arbitrary use (or abuse) of state power. If anything, the provisions of the permits institutionalise the arbitrary exercise of state power thus leaving the permit holders without recourse to the courts. Since the Constitution does not grant a fundamental right to administrative justice, the permit holders have no legal right to question the fairness or reasonableness of administrative decisions through administrative review.

The permits to cultivate and depasture stock are very much reminiscent of the farming and grazing rights which were issued to the peasantry in terms of the *Native Land Husbandry Act* of 1951.⁹ It is indeed a typical situation of back to the past. While the state has undergone relative democratisation, it remains authoritarian in its dealings with the peasantry. As with its colonial predecessor, the state has used the tenure system in an attempt to control the peasant production process and to improve productivity. In fact, the government argues that permits should not be viewed narrowly as just defining the tenurial system but also as a management tool for the achievement of the programme's objectives (Zimbabwe 1985). The state uses law as an instrument of modernising peasant agriculture. It is an instrument which institutionalises the exercise of state power *vis-a-vis* the pursuit of modernisation objectives.

5.2.2 The State and Resettled Farmers.

As argued in the foregoing, the state has used the land tenure system in the resettlement areas for purposes of controlling the peasant production process. As Neocosmos (1993:67) correctly observes, land tenure is not simply a legal relation of access to land, it also reflects important class relations within rural areas as well as relations between the state and the people. Thus the permit system of tenure reflects important relations between the state and the resettled farmers.

In order to perform the managerial and regulatory functions which were deemed necessary given the objectives of the resettlement programme, ownership of the resettlement areas was vested with the state while their administration was vested with central rather than

⁹ See Chapter 2 for a discussion of the *Native Husbandry Act*.

local government institutions (Zimbabwe 1983,1985). From the inception of the programme the Department of Rural Development (DERUDE) has been responsible for its administration. However, given the intensive technocratic planning that precedes resettlement, a total of nineteen ministries and/or government departments are involved in the resettlement programme (Zimbabwe 1993:35). The administration of individual schemes is undertaken by Resettlement Officers whose duties range from registering settlers and allocating plots, issuing permits and enforcing their terms and conditions, to facilitating liaison between government departments and the settlers.¹⁰ The Resettlement Officers are thus the interface between the state and the peasantry. As the agents of the Minister, they exercise the wide discretionary powers which are conferred by the various permits.

As argued above, under the law the resettled farmers have no procedural safeguards against the arbitrary exercise of discretionary powers which are conferred by the various permits. Until the enactment and implementation of the *Rural District Councils Act (No.8 of 1988)*, the absence of legal safeguards was compounded by the lack of representative local government structures. The resettled farmers were denied elected local government representation in the name of management and planning. Administrators were therefore not accountable to elected political institutions in as much as they are not accountable in law. In terms of the *Rural District Councils Act*, the administration of resettlement areas has formally been brought in line with other rural areas. Hence village development committees have been formed in most resettlement areas. The village development committees, however, lack formal recognition in resettlement administrative structures (Land Commission 1994a:63). In other words, the resettlement policies and procedures have not been brought into line with changes in local government structures.

The ideology behind the resettlement programme is a typical example of what Shivji (1991:31) calls the ideology of developmentalism which 'centres on economics where both law and the state are superseded'.¹¹ The resettlement programme was conceived of as a

¹⁰ Personal communication with the Chief Resettlement Officer.

¹¹ See Chapter 1 for a discussion of the ideology of developmentalism.

management exercise for the fulfilment of economic objectives of productivity. Within the developmentalist ideology, law is only used as an instrument for facilitating the management objectives. Hence the discretionary powers conferred on administration by the permit system of tenure. Local government political representation was suspended since it would have interfered with the economic management objectives of the programme.

The resettled farmers have not accepted the terms of the permits without resistance. In most cases, they have ignored the terms and conditions imposed on them by the permits. Fortunately for them, the implementation of the wide discretionary powers which are conferred on Resettlement Officers by the various permits has not been very effective. A survey carried out by the Monitoring and Evaluation Section in the Ministry of Lands, Agriculture and Water Development revealed that farmers were cultivating more land than permitted by the rotational requirements set out in the permit (Zimbabwe 1993:20). The Comptroller and Auditor-General (Zimbabwe 1993:21) observed that the terms of the permit are not always complied with. Despite the fact that the land belonged to the state, some settlers sold their rights in the land while others sub-let their plots. Some permit-holders did not give up urban employment.¹² As a result of the insecurity of tenure in the resettlement areas, many resettled farmers did not surrender their customary rights to land in the communal areas. The terms of the permits have not been effectively enforced because of a combination of staff shortages and lack of qualified staff (Zimbabwe 1993:17).

It is hardly surprising that enforcement mechanisms have proved inadequate given the highly technocratic and bureaucratic approach to land redistribution. Moreover, the insecurity which is inherent in the permit tenure system may have been inimical to the achievement of the objectives of productivity. Given the insecurity of tenure, resettled farmers may have been discouraged from investing in land that might be taken away from them on the whims and caprices of the state. In a word, the state has been hoisted with its own petard. MacGarry's (1994:28-9) comparison of a resettlement area and a recently settled adjacent communal area

¹² Personal communication with the Chief Resettlement Officer in Department of Rural Development.

suggests that less technocratic and more democratic methods of land redistribution would have yielded similar results. The comparison shows that peasants who settled in the communal areas are subject to less government regulation and are regulated by elected local government structures. They have performed as well as their counterparts in the highly regulated resettlement areas. If less control oriented measures had been adopted, some of the resources spent on the administration of the schemes could have been used to acquire more land for resettlement. But the adoption of democratic processes could only have been preceded by a change in the modernist view that peasants are traditional and therefore incapable of producing surpluses without bureaucratic control.

5.3 Social Relations in the Resettlement Areas.

According to the *TNDP* (Zimbabwe 1982a) the resettlement programme was an important aspect of the strategy of 'growth with equity'. In pursuit of the equity objectives of the strategy, all resettled farmers were allocated the same amount of arable land, that is, five hectares. They were also allocated the same grazing rights. The assumption was that there was no social differentiation among the resettled farmers and that they all had the capacity and means to utilise the land. No provision was made for additional land for those who required more than the allocated five hectares. The planners did not make provision for those without the means to cultivate the land. In terms of the permits, failure to cultivate the land would result in the revocation of the permit. Failure to follow the rotational requirements also constituted a breach of the terms of the permits.

The assumption that there was no social differentiation among the peasantry was unfounded. As argued in Chapter 1, the peasantry are subject to processes of social differentiation. The breach of the terms and conditions relating to rotational requirements and the sub-letting of land suggest that processes of social differentiation are underway in the resettlement areas. Some resettled farmers are engaging in accumulation while others are unable to utilise the land allocated to them because of lack of means of production such as cattle. The commoditisation of rights to land also points towards processes of social

differentiation. There is thus a process of class formation which is taking place in the resettlement areas.

An important aspect of social relations of production in the resettlement areas is the question of gender relations. Since production is based on household labour, it is important to ascertain the gender relations within the resettlement areas. Perhaps the best way of approaching the issue is through an analysis of women's access to land. The initial settler selection criteria appears to have been gender-neutral. *Prima facie*, women satisfying the criteria qualified for resettlement and to have permits issued in their names. In practice, only widows and unmarried women with dependants qualify to have land allocated to them in the model A schemes.

With respect to married women, recent research in three resettlement areas has shown that permits are issued in the name of the husband (Chenaux-Repond 1993). Unmarried women constituted 11,6% of all permit holders in the area studied. An earlier research also found that only 7% of permit holders were women (Chimedza cited in Bruce 1990:37). Of the married settlers, 98% of the permit holders were male, while the remaining 2% were women. The rationale for issuing permits in the name of the husband is that he is the head of the household, the breadwinner, and that traditionally, only males had primary rights to arable land (Chenaux-Repond 1993). Both government and public opinion consider the male spouse to be the household head (Jacobs 1992). Only widowed and divorced women are considered as household heads for purposes of resettlement.¹³

The issuing of permits in the name of the male spouse has enhanced and perpetuated the patriarchal division of labour which is found in the communal areas. In model A schemes, the power of male spouses to control the labour of their wives through the control of access to land is enhanced. The schemes envisaged the creation of households which would produce both use values and exchange values on the basis of unpaid family labour. Thus, by issuing permits in the name of the male spouse, the state has given him a dominant position in the

¹³ In a personal communication, the Chief Resettlement Officer said permits are now issued in the name of both spouses. This does not appear to be the case.

family and therefore retained the patriarchal division of labour. It is not without significance that the permit to cultivate provides that the holding should 'be used solely for agricultural purposes for the holder's benefit'. It is, however, important to point out that because of the prohibition against alternative employment, there are more male spouses present in the resettlement areas than in the communal areas. This means that the labour burdens of farming the holding are shared between the spouses (Jacobs 1992).

That the resettlement programme has reproduced and perpetuated patriarchal labour processes is borne out by Chenaux-Repond's (1993) research findings in one of the resettlement schemes which show that 14% of the male permit holders who had settled as monogamists have married one or more additional wives since their arrival; and that of those who settled as polygynists, 13% have married one or more additional wives. She points out that:

Polygynists are very open about having married additional wives 'for labour', in preference to hiring workers (1993:7).

Marriage continues to be a medium of exchange of bridewealth for the labour power of women. As expanded reproduction occurs and the means of production at the disposal of the household expand beyond the capacity of family labour, men marry additional wives in order to increase the labour available to the household instead of buying labour power. Thus customary legal forms of obtaining labour continue to be relied upon under changed socio-economic conditions.

A similar pattern to that which has developed in the communal areas has been observed with respect to women's loss of secondary rights of access to their own pieces of land where they can grow their own crops.¹⁴ Only 60% of the women interviewed by Chenaux-Repond (1993) reported that they had been given their own fields. Another research found that only 37% of the women were allocated land for their own use and that this right of access differed from the pre-colonial one in the sense that the husband could retract the right to use at will (Jacobs 1993). Chenaux-Repond (1993) observes that a minority of men claimed that the

¹⁴ For a full discussion on women's secondary rights of access, see Chapter 6.

permit forbade them giving their wives a field as they were the named holders and the permit required that the holding be used for the exclusive benefit of the holder.

In the event of a divorce, the fact that permits are issued in the name of the male spouse militates against women as it extinguishes their rights of access to land in the resettlement scheme. They cannot claim any rights on the basis of the permits since they are not issued in their names. Recourse to the *Matrimonial Causes Act* (No. 33 of 1985) is usually foreclosed for many rural women as their marriages tend to be unregistered customary law unions. There is therefore no legal basis for women to claim a share of the property acquired during the subsistence of the union. Research has shown that 10% of the male permit holders in the schemes studied have divorced a wife since they were resettled (Chenau-Repond 1994). The law is silent on the inheritance rights of widows although officials suggest that the policy is that the wife inherits the permit upon the death of the husband.¹⁵ The fact that inheritance rights are not enshrined in law and depend on an unwritten discretionary interpretation of policy makes the position of widows precarious.¹⁶

In model B schemes women have a right to be members of co-operatives in their individual capacities. This suggests that they have equal access to land as male members of the co-operative. Bruce (1990) notes that there is little or no information on the critical issue of how women fare in decision making about resources in the household in model B schemes.

Model A, the main resettlement model, reproduces the gender inequalities which are enshrined in 'customary' law forms. By issuing permits in the name of the husband, the state subordinates women's access to land to that of men. Men use their control of women's access to land to control the production and exchange of commodities. Customary legal forms of obtaining labour such as marriage add to the gender inequality.

¹⁵ Personal communication with the Chief Resettlement officer.

¹⁶ In a personal communication the Chief Resettlement Officer argued that of late the practice is to issue the permit in the name of both spouses in order to safeguard the inheritance rights of the widow. This has not been confirmed. He did acknowledge though that this did not resolve the problem of divorce as the land cannot be subdivided.

Conclusion.

This chapter has shown that while the resettlement programme combined political, social and economic objectives, the state gave more weight to economic objectives than to the others. The political objectives of the programme sought to stabilise rather than transform the existing social relations, while the social objectives sought to alleviate poverty among the marginalised sections of rural society. The economic objectives focused on increasing productivity. As argued, the design and implementation of the land redistribution programme was informed by the economic objectives. As a result of the emphasis on productivity, both law and politics have been de-emphasised within the land redistribution programme. Thus, both the design and implementation of the programme have been technocratic and bureaucratic.

The emphasis on productivity derives from a modernisation perspective which views peasant production processes as traditional. The technocratic and bureaucratic methods of land redistribution which characterise the resettlement programme are intended to transform the traditional production process through strict state management and regulation. Law is used as an instrument of facilitating the management objectives of the programme. Hence it gives wide discretionary powers to administration. The political right of resettled farmers to local government representation was suspended in order to facilitate the management objectives of the central government.

The chapter has also examined the nature of the social relations which the state sought to create in the resettlement areas. It has shown that the state worked on the assumption that there was no social differentiation among the peasantry. Evidence from the resettlement areas suggests that processes of social differentiation are underway. By issuing permits in the name of the male spouse, the resettlement programme has enhanced patriarchal household relations of production. While this chapter examines agrarian reform in what may be termed the reform sector, the next chapter examines agrarian reform in what used to be the African reserves during the colonial era.

CHAPTER 6.

AGRARIAN REFORM IN THE COMMUNAL LANDS.

Introduction.

The last chapter analysed the redistribution of land to the peasantry with particular emphasis on land tenure systems and relations between the resettled farmers and the state. Only about 5 per cent of peasant households have benefited from the land redistribution exercise. The majority have remained in the tribal trust lands which were renamed as communal lands soon after independence. This chapter analyses agrarian reform in the communal areas. As Chapter 2 has shown, at independence the then tribal trust lands were characterised by peasant landlessness, arbitrary state intervention in the implementation of ecological and economic policies, and access to land on the basis of customary tenure. It has also shown that there was a link between customary tenure and the interventionist policies. Under the colonial customary tenure, land was vested in the state. The colonial state used its control over land in order to implement ecological and economic policies such as centralisation. Customary tenure therefore reflected relations between the colonial state and the peasantry. Thus agrarian reform in the communal areas has implications for relations between the post-colonial state and the peasantry.

Since agrarian reform in the communal areas is intricately linked with state-peasant relations, the first part of this chapter analyses post-colonial reforms in local government structures which are responsible for land administration. The chapter shows that the government introduced elected district councils and vested them with the authority to administer the communal areas. It argues that district councils did not link up with local popular structures which emerged in the rural areas during the war. The chapter also argues that district councils did not provide avenues for local popular participation as they were far removed from the peasantry. In addition, it shows that the local development institutions which were introduced in 1984 were tasked with development rather than political issues.

The chapter demonstrates that while the government took away some of the powers of chiefs such as land allocation and judicial functions and vested them in new institutions, it

continued to give the chiefs recognition for purposes of legitimacy. The chapter argues that the ambivalence regarding the authority of chiefs reflected the ideology of neo-traditionalism. To some extent, this ambivalence has contributed to institutional conflicts over land administration. In addition, the chapter examines law and the institutions regulating land allocation. It shows that the government vested the authority to allocate land with district councils and required them to apply customary law of tenure. The chapter also shows that there have been conflicts between local government institutions and traditional institutions regarding the allocation of land.

In addition, the chapter demonstrates that, contrary to the official version of customary tenure, individualisation and limited commoditisation of landholdings has occurred in the communal areas. The chapter argues that as part of its drive towards modernisation, the state subordinates customary rights to modernisation programmes or programmes intended to increase peasant productivity. Finally, the chapter shows that customary tenure underwrites class and gender differentiation in the communal areas. It demonstrates that notwithstanding a number of apparently progressive legal reforms on gender issues, women still gain access to land through their husbands or male relatives. It argues that legal reforms have not addressed the patriarchal household relations of production.

6.1 Local Government and Agrarian Reform.

One of the grievances of the peasantry against the colonial state concerned the authoritarian nature of local government. Throughout the colonial era, local government structures were associated with unpopular agrarian policies. During the liberation war, local government structures were involved in attempts by the colonial state to maintain its authority in the context of nationalist struggles. However, because of its rural character, the guerrilla war had a strong impact on, and undermined, rural administration. The guerrilla war forced the colonial state to retreat from many areas of the country. The void that was created was filled by people's committees which were established by the peasantry in co-operation with guerrilla forces (Ranger 1985, Kriger 1988). In some parts of the country a situation of dual power

existed (Cliffe et al 1980). At independence there was thus need to establish local government structures in the rural areas.

In the circumstances, the government moved swiftly soon after independence and introduced fifty-five elected district councils which took over the administration of rural areas. The district councils were designed and adopted by the Muzorewa government just before independence (Alexander 1994:327). Hence the government merely implemented an inherited policy. As constituted in 1980, the powers of administration of the district councils covered the then tribal trust lands and did not extend to white farming areas which continued to be administered by rural councils. It was not until 1988 that the *Rural District Councils Act (No 8 of 1988)* was enacted for purposes of amalgamating rural and district councils. While rural district councils had their own sources of revenue, district councils depended on allocations from the central state.

In the context of 1980, the new district councils had to liaise with people's committees which had been established during the war. The committees were involved 'in distributing aid, reconstruction and communication with central government officials' (Alexander 1994:327). In addition, the committees were active in administration in the communal areas and their functions involved hearing cases and allocating land (Ranger 1985:291). In the absence of intermediate party structures which were yet to be established by both ZANU (PF) and ZAPU, the local committees were autonomous from central party control. As such, they were not reliable conduits for central party or government policies. Thus for a while, a situation of dual power existed in rural administration. The existence of dual power did not survive for long. Neither the government nor ZANU(PF) supported the popular committees; the major reason being that the committees were autonomous and therefore unreliable as agents for both the state and the party. Moreover, in Matebeleland and parts of the Midlands and Mashonaland West, they were considered to be loyal to ZAPU and therefore disloyal to ZANU(PF) (Alexander 1994:327).¹ In the circumstances, the committees were demobilised and soon

¹ In the 1980 elections, ZAPU's support was concentrated in Matebeleland and in parts of the Midlands and Mashonaland West. During the war, ZIPRA forces, the armed wing of ZAPU, had been active in these areas and had helped form the popular committees.

withered away. Perhaps this supports Kriger's (1988) contention that the wartime committees survived on the basis of a combination of collaboration and coercion.

While district councils were elected institutions, they were quite removed from the people. It was not until 1984 that the government created village and ward development committees. These are local government structures which were established by the *Statement of Policy and Directive* by the then Prime Minister in 1984. Village Development Committees (VIDCOs) are composed of six members, four of whom are elected by adults from 100 households, the other two representing women and youths organisations. Six VIDCOs make up a Ward Development Committee (WADCO). A WADCO consists of the chairpersons and secretaries of the constituent VIDCOs, a representative each from the youth and women's mass organisations, and the Councillor for the ward.

VIDCOs and WADCOs are not substitutes for the popular committees which were demobilised between 1980 and 1981 for the simple reason that they are products of a top-down process. They were created by central government as development institutions ostensibly to ensure popular participation in the development process. They are supposed to prepare development plans based on the felt needs of grassroot communities. In theory plans are transmitted from the grassroots and consolidated at the district, provincial, and national level and then implemented by line ministries (Land Commission 1994a:108). In practice, grassroot committees lack the technical capacity to prepare development plans. As a result, development projects originate from technical ministries (Alexander 1994:329-30, Land Commission 1994a.108). WADCOs and VIDCOs were conceived of as development institutions rather than local government representative institutions. The government did not envisage that they would be involved in political issues. Their remit does not extend beyond development conceived of as a technocratic and managerial process. Hence the emphasis on the preparation of development plans. The government's conception of the committees reflects the ideology of developmentalism which is predicated on economistic and technocratic notions. Thus behind the facade of popular participation and representation lies a technocratic and bureaucratic relationship between the state and the peasantry.

The introduction of elected local government institutions to administer the communal areas had the potential of making chiefs, headmen and kraalheads redundant. Towards the end of the colonial era, the colonial state had enhanced the administrative authority of chiefs in an attempt to gain legitimacy. The new government's policy towards traditional institutions was ambivalent. *Prima facie*, the government sought to take away the authority of chiefs and their subordinates. In 1981, it enacted the *Customary Law and Primary Courts Act (No 6 of 1981)* which took away the judicial powers of chiefs, headmen and kraalheads and vested them in new court structures. Similarly, in 1982 it enacted the *Communal Lands Act (No 20 of 1982)* which took away the authority of chiefs to allocate land and vested it in district councils. The Ministry of Lands (Zimbabwe 1986c:20) viewed chiefs, headmen, and kraalheads as traditional institutions which were inimical to increased communal area productivity. It thus supported the marginalisation of these bastions of tradition as an essential part of agrarian reform and the drive to modernity. As far as the new government was concerned, chiefs were also alternative centres of authority.

While there have been attempts to replace chiefs as representatives of state power in the rural areas with village and ward development committees and district councils, the political authority of chiefs has been recognised and reproduced at the national level. The Lancaster House Constitution reserved 10 seats in the Senate for chiefs (section 33(1)(c)). When the Senate was abolished and the House of Assembly enlarged to 150 seats in 1989, the Constitution reserved 10 seats for chiefs.² Moreover, the *Chiefs and Headmen's Act* provides that chiefs are responsible for 'performing the duties and functions pertaining to the office of the chief as a traditional head of his community' (section 6). In terms of the Act, chiefs in a province constitute a Provincial Assembly which elects members to a national assembly, the Council of Chiefs. The Council is tasked with making representations to the Minister regarding the needs and wishes of the inhabitants of the communal lands (section 20). There is thus an obvious overlapping of institutions.

² See section 38 of the Constitution of Zimbabwe as amended by the Constitution of Zimbabwe Amendment (No. 9) Act, 1989.

There have been other practices which reflect inconsistencies in the government's policy towards traditional institutions. For example, the Ministry of Local Government insisted that chiefs be *ex officio* members of the new district councils regardless of the wishes of the local communities. Furthermore, chiefs and headmen received better remuneration than elected members of the new local government structures (Kriger 1992:225). Prior to both the 1985 and 1990 national elections, Mugabe made undertakings to chiefs regarding the restoration of their traditional authority. Before the 1985 elections he promised them the return of their judicial authority, and before the 1990 elections he promised them involvement in the selection of people for resettlement (Alexander 1994:328). The pre-1985 election undertaking has since been fulfilled through the repeal of the *Customary Law and Primary Courts Act (No 6 of 1981)* and its replacement with the *Customary Law and Local Courts Act (No. 2 of 1990)*. The latter statute has restored the judicial authority of chiefs and headmen. The Act, however, denies chiefs jurisdiction over disputes relating to land.

Thus the fortunes of traditional institutions regarding rural administration have waned and waxed. The contradictions and confusion in policies and state practices reflect a number of cross-cutting ideologies and policies. Two factors informed the attempt to undermine the authority of traditional institutions. First, the institutions had been compromised by their association with the colonial state. In some areas, their authority and legitimacy had been undermined by guerrilla forces which had established alternative popular structures. Some chiefs, however, still had legitimacy in the eyes of local communities. Second, some elements within the state apparatus viewed traditional institutions as bastions of tradition. And according to modernisation theory, tradition is the opposite of modernity. In order to foster and promote modernisation, some sections within the state apparatus supported attempts to undermine tradition and its value systems which militated against surplus production for the market. The laws which sought to undermine the authority of traditional institutions were thus seen as instruments for transforming rural society from tradition to modernity (Zimbabwe 1986c:20).

Contrary to the above developments, other factors bolstered the authority of traditional institutions. As already indicated, in terms of the Lancaster House Constitution, chiefs were

represented in the upper chamber of the bicameral legislature. For the British (as some of the inventors of African tradition) chiefs represented pre-colonial traditional structures akin to their own feudal institutions. As such, they had to be accommodated within the Westminster constitutional model by way of reserved seats in the upper legislative chamber. The new rulers, informed by the ideology of neo-traditionalism, were not opposed to the idea of reserved legislative seats for chiefs despite attempts to undermine chiefly authority. Hence the retention of the reserved seats when the upper chamber was abolished. Neo-traditionalism was employed for purposes of mobilising political support and legitimacy for the regime in power. Given the historical background of the chiefs' collaboration with the colonial state and their subsequent marginalisation during the war, the government could not justify their rehabilitation on the grounds of respecting African culture. As Alexander (1994:329) has put it, the version of culture which the government privileged 'had less to do with cultural nationalism than with Rhodesian traditionalism'. As argued below, the blowing hot and cold regarding the status of traditional structures had implications for agrarian reform in the communal areas.

6.2 Law and Communal Land.

6.2.1 Land Allocation.

At independence, the allocation of land among the peasantry was governed by the *Tribal Trust Land Act of 1979* which was repealed by the *Communal Lands Act (No 20 of 1982)*.³ An important point that should be made at the outset is that the post-independence government adopted the conceptual and legal framework for regulating peasant access to and use of land from the colonial period.⁴ Hence the similarities between the *Communal Lands Act* on one hand, and the *Tribal Trust Land Act* of 1979 and the *Land Tenure Act* of 1969 on the other, is very striking given that peasant grievances during the colonial period were generally about

³ See Chapter 2 for a discussion of the Tribal Trust Land Act.

⁴ In this respect the post-independence government of Zimbabwe followed the footsteps of many post-independence governments elsewhere in Africa. A recent Tanzanian Presidential Commission of Inquiry into Land Matters noted that: 'The post-independence government inherited the conceptual, and the major part of the legal, framework on land tenure from the colonial period' (Land Commission 1994a:1994:17).

land. The only notable change has been the vesting of the authority to allocate land in elected district councils rather than in the chief, headman and kraalhead.

The objectives of the *Communal Lands Act* are, *inter alia*, to provide for the regulation of the occupation and use of communal land. Communal land is defined as any land that was tribal trust land subject to any land which may be added to or subtracted from it (section 3). The land vests in the President who is authorised to permit it to be occupied in accordance with the provisions of the Act (section 4).⁵ Communal land may be occupied and used pursuant to a previously acquired right or in accordance with the terms and conditions of any right, consent or permit granted or issued in terms of the Act or any other enactment. The right to occupy and use extends to spouses, dependant relatives, guests or employees (section 7).⁶

A person wishing to use and occupy communal land for agricultural and residential purposes has to obtain the consent of the rural district council responsible for the area in question. When granting the consent, the rural district council is enjoined to:

have regard, where appropriate, to customary law relating to the allocation, occupation and use of land in the area in question;

grant consent only to persons who, according to the customary law of the community that has traditionally and continuously occupied and used the land in the area concerned, are regarded as forming part of such community, or who according to such customary law, may be permitted to occupy and use such land (section 8(1)).

Where no community has traditionally and continuously occupied and used land in the area concerned, the rural district council is authorised to grant consent to such class of persons as the Minister may specify by notice in writing to the rural district council (section 8 (1) and (2)). As indicated, the above provision which vests land allocation in elected institutions has been the only significant departure from colonial practices relating to the allocation of land. The change in the institutions which allocate land should, however, not be taken at face value.

⁵ Contrary to the argument in the Land Administration Study No 4 which was done for the Land Commission (Land Commission 1994a:47), the vesting of land in the President was not introduced by the Communal Lands Act and did not combine the concept of chiefly trusteeship in land, and the socialist concept of collective ownership by the people. The provision merely reproduced section 7 of the Tribal Trust Land Act.

⁶ See section 14 of the Tribal Trust Land Act for a similar provision.

What is significant is that the land continues to vest in the President who is the executive authority of Zimbabwe. As will be argued below, the vesting of land in the President has implications for state intervention in land allocation and the land use practices of the peasantry.

Thus, while the government affirmed its support for customary law regarding access to and use of land it removed the authority to allocate land from customary institutions and vested it in elected state institutions. The application of customary law is thus vested in non-customary institutions: the rural district councils. In actual practice, however, the power to allocate land vests in ward or village development committees even though formal delegations have not been made (Bruce 1990).⁷ The informal delegations have been forced upon rural district councils by the fact that they are far removed from peasant communities. Thus, in addition to their remit of drawing local development plans, VIDCOs and WADCOs are authorised to allocate land.

The vesting of the authority to allocate land in the rural district councils and the attempt to undermine the authority of chiefs has created institutional conflicts. Chiefs and their subordinates have not given up their powers to allocate land without struggle.⁸ Some chiefs have seized *de facto* authority on land allocations as a result of the ineffectual capacity of the central state to implement its powers of land control (Moyo 1994). Headmen and kraalheads are sometimes elected to positions in VIDCOs or WADCOs and it is not always clear upon which source of legitimacy they are drawing in making land administration decisions (Bruce 1990). The institutional melange is further compounded by the involvement of local ZANU(PF) structures in land allocation. It would appear that land is allocated by one of the following combination of institutions:

- (a) the village chairperson of ZANU(PF), the VIDCO chairperson and the kraalhead; or
- (b) the VIDCO chairperson and the kraalhead; or

⁷ The Symposium on Agrarian Reform (Zimbabwe 1987) recommended that while the land allocation system should remain with rural district councils in the short-term, in the medium to long-term the power to allocate land should be devolved to the VIDCO level.

⁸ The Symposium on Agrarian Reform (Zimbabwe 1987) recognised the potential conflict between traditional institutions of local leadership and the new development institutions of VIDCOs and WADCOs it recommended that kraalheads and headmen be incorporated into the new development institutions as *ex officio* members.

- (c) the VIDCO chairperson, the councillor for the area concerned, the kraalhead and the extension officer; or
- (d) the kraalhead and the chiefs.⁹

The institutional melange is a result of inter-cutting and contradictory state policies. As argued in the foregoing, the government has simultaneously attempted to undermine and bolster the authority of chiefs, headmen and kraalheads. In the circumstances, chiefs, headmen and kraalheads have exploited the neo-traditional ideology and the confusion in government policy and have continued to allocate land. It is the blowing hot and cold which, to a large extent, has given rise to conflicts in the allocation of land. Conflicting signals have been sent to chiefs who have used their voice in the legislature to clamour for a return of their powers to allocate land. There is a second reason. While in some areas the authority of chiefs was undermined during the liberation war because of their collaboration with the colonial state, in others they retained their legitimacy. Hence the continuing competition with the new development institutions. The involvement of ZANU(PF) local structures in land allocation reflects the interpenetration of the ruling party and the state.

The conflicts and struggles over land allocation are exacerbated by the shortage of land in communal areas. At independence landlessness was already high in the communal areas. (Zimbabwe 1982c). The resettlement programme has not eased the demands for land. Most struggles over land allocation centre on grazing land. In the context of land shortages, those vested with the authority to allocate land exercise power in the allocation of a scarce resource. It is therefore not surprising that there are power struggles as to which institutions have the authority.

6.2.2 Customary Land Tenure.

As indicated in Chapter 3, section 89 of the Lancaster House Constitution recognised colonial laws relating to the application of customary law. The Constitution defined 'African customary law' as the tribal law and custom of Africans of a particular tribe, while the *Customary Law*

⁹ This emerged from discussions by women from all over the country at a Workshop on Women and Land. The Workshop was organised by the Zimbabwe Women's Resource Centre and Network and was held in Harare on 20 January 1994. Its objective was to come up with recommendations for submission to the Commission of Inquiry into Appropriate Agricultural Land Tenure Systems.

and *Primary Courts Act (No.6 of 1981)* defined it as the law of the indigenous people of Zimbabwe or a section of the community thereof. The *Customary Law and Local Courts Act (No.2 of 1990)* defines it as the law of the people of Zimbabwe, or a section or community of such people before the 10th of June 1891 as modified and developed since then.¹⁰ With respect to land allocation, the *Communal Lands Act* enjoins rural district councils to grant consent to occupy land 'only to persons who, according to *the customary law of the community that has traditionally and continuously occupied and used the land in the area concerned, are regarded as forming part of the community ...*'(emphasis provided).

The nature of customary tenure, however, remains unclear. As argued in Chapter 1 and shown in Chapter 2, customary tenure as understood today was shaped by colonial policies. The official version of customary tenure as articulated by the Minister of Lands, Agriculture and Water Development, is predicated on the idea that every member of the community has a basic 'right of avail' to resources (Kangai 1994:4). The right of avail is said to comprise the right to cultivate land, the right to graze livestock; the right to fetch firewood, water, sand, stone, soil and timber for domestic uses; and the right to a residential site. While the form of customary tenure might approximate the official version, its content is a product of a number of developments both during the colonial and post-colonial periods. The content has been shaped by a number of factors which are discussed in Chapter 2. These factors include the expansion of commodity relations among the peasantry and the consequent privatisation of arable land; colonial state policies such as centralisation, the introduction of individual tenure under the *Native Land Husbandry Act* and the provisions of the *Land Tenure Act* and the *Tribal Trust Land Act* which permitted communities to apply for freehold tenure, and population pressures.

Whatever tenure arrangements exist in different communal areas of the country, they are certainly not synonymous with the pre-colonial land holding practices of African communities. The *Communal Land Act* is therefore misleading when it talks of 'a community

¹⁰ The 10th of June is the date when Roman-Dutch Law was received as the law applicable in Zimbabwe.

that has traditionally and continuously occupied and used the land in the area concerned ...'. History shows that peasants were being expelled from land they occupied as late as the early 1970s with the implementation of the notorious *Land Tenure Act*. The post-independence government's conception of customary tenure is based on an ahistorical premise of communities which enjoyed continuous and uninterrupted occupation of land. The conception fails to take cognisance of the impact of various colonial policies which impinged on the peasantry's access to and use of land. It was because of the lack of clarity in the nature of communal tenure that the Chavunduka Commission recommended the initiation of a study to identify existing land tenure systems in the communal lands with the objective of defining future patterns (Zimbabwe 1982c:63).

It is now generally accepted that communal tenure applies only to grazing land and areas under communal projects. Even then the allocation of grazing land to new families is constantly reducing the communal land available to the community (Moyo 1994). Arable land and residential plots are 'held under a *de facto* private property regime, whereby families have established full control over land and its transfer' (Moyo 1994:9). Private property rights in arable land and residential plots are given unofficial recognition and are described as 'traditional free-hold' (Land Commission 1994a:49). Cousins (1990) observes that transactions relating to land take the form of a negotiated entry into the collectivity of the village or community which brings with it property rights and obligations held by other members of that collectivity. Hence non-members of the community gain access to community land upon payment of consideration to institutions which are assigned the role of allocating land. Land transfers also occur through measures such as informal sales of land and farm infrastructure developments (Moyo 1994).¹¹ The mediation of access to and use of land through community membership conceals the individualisation of arable land and homestead sites and the commoditisation of use rights.

¹¹ At the workshop on Women and Land, the participants said land sales by VIDCO chairmen and headmen is common.

In the circumstances, there is confusion as to the nature of land tenure in the communal areas. It is hoped that the confusion will be resolved by the Land Tenure Commission's Report which, hopefully, should unravel the myth of communal tenure and identify the actual land holding practices of the peasantry. It is only on the basis of such a national consultative process that a new land tenure can be worked out for the communal areas. Moyo (1994) correctly argues that current debates which suggest either the return of land control to traditional powers or the promotion of land privatisation tend to oversimplify an otherwise complex and dynamic process of land administration and market development.¹²

6.3 Customary Tenure and State-Peasant Relations.

In addition to being a legal relation of access to land, land tenure is also an important reflection of relations between the state and the people (Neocosmos 1993:67). Thus, customary tenure is a reflection of relations between the state and the inhabitants of the communal areas. Like its colonial predecessor, the post-colonial state has used customary tenure for purposes of controlling the peasant production process and for changing communal area settlement patterns. As argued in the foregoing, land vests in the President and is administered by rural district councils. Individual access to land is supposed to be mediated through the community. The land rights of the community are, however, unclear. What is clear is that the state uses its control of the land to control the peasantry. In Moyo's words, 'The state's legal jurisdiction over Communal Lands allows the GOZ (Government of Zimbabwe) to remove peasants at will, in the name of development, and to restrict peasant utilisation of certain land resources ...' (1994:6).

The intention to control the peasantry is best exemplified by the powers that are accorded to the Minister of Local Government, Rural and Urban Development under the *Communal Lands Act*. She may, after consultations with the rural district council responsible for the area in question and upon publication of notice in the Government Gazette, set aside

¹² At the Workshop on Women and Land, most of the women rejected privatisation of land on the grounds that they would lose their secondary rights. They also argued that if titles are issued in the name of male spouses, women would be unable to stop them from selling the land.

any land contained in communal land for the establishment of a township, village, business centre, industrial area or an irrigation scheme (section 10(1)). She may also set aside any land contained in communal land for any purpose which she considers to be in the interests of inhabitants of the area concerned, or in the public interest, or which she considers will promote development of the communal land generally or of the area concerned (section 10(2)). The Minister's powers are not subject to procedural safeguards and the fairness or reasonableness of her decision is not subject to administrative review.¹³ A person who is dispossessed of land is entitled to be provided with alternative land or to compensation (section 12).¹⁴ Moyo (1994) argues that peasants who are displaced by development programmes receive less than Z\$500 each as compensation and access to resettlement areas.

The intention to control the peasantry is also reflected in the provisions of by-laws which were made pursuant to the provisions of the *Communal Lands Act*. The Act authorises rural district councils to make by-laws relating to the functions and duties conferred or imposed upon them. The Minister may publish model by-laws providing for any of the matters which the rural district council may make by-laws (section 14).¹⁵ In 1985 the Minister published the *Communal Land (Model)(Land Use and Conservation) By-laws, Statutory Instrument (SI No. 166 of 1985)*. The statutory instrument gives guide-lines on land use planning and conservation to rural district councils and it covers such issues as restricting the number of livestock and the regulation of grazing; the regulation of areas to be cultivated, the means and implements to be used in cultivation, the types of crops which may be grown and their rotation; and specification of conservation measures; etc.

State control of the peasant production process and settlement patterns is predicated on the assumption that the agricultural practices of the peasantry and communal tenure are

¹³ Compare the lack of procedural safeguards with the safeguards which are accorded to citizens who hold land under freehold tenure. See Chapter 4 and 8 for discussions on safeguards which are provided in terms of the Land Acquisition Acts.

¹⁴ For similar provisions in colonial legislation, see sections 43 and 44 of the Native Land Husbandry Act of 1951, section 43 of the Land Tenure Act of 1969, and section 11 of the Tribal Trust Land Act of 1979.

¹⁵ See sections 51 and 52 of the Land Tenure Act of 1969 and section 20 of the Tribal Trust Land Act of 1979 for similar provisions in colonial legislation.

traditional and, therefore, inimical to increased productivity and the conservation of resources. This view is a leitmotif of most post-colonial policy documents. The Riddell Commission (Zimbabwe 1981b), while recognising the need to redistribute land, argued that peasant agriculture was an inefficient use of land. The Commission suggested that each village should be given blocks of land which would be divided into arable, grazing and residential areas. Within the consolidated village land, each peasant would be entitled to her own plot. In addition, it recommended that people should join together in what would be a legal entity, with title to property and a capacity to secure borrowed money. Village land would be administered by an elected leadership committee which would run the life of the village under its jurisdiction in consultation with the relevant authorities. The powers of the leadership committee would not only include agricultural plans of the people, but also the provision of social and economic services. In addition, the committee would be responsible for the allocation of land which would be registered in the title and for arranging credit facilities for the entire community from the Agricultural Finance Corporation. Finally the Commission recommended the abolition of labour migration.¹⁶ Williams (1983:118) correctly argues that the Riddell Commission's recommendations, if implemented, would have subjected the peasantry to more effective control and administrative supervision. The recommendations of the Commission provided a justification for separating the question of land access from that of land use (Drinkwater 1988:138).

Some of the views of the Riddell Commission were echoed by the Chavunduka Commission (Zimbabwe 1982c). While acknowledging that peasants are rational producers who respond to economic incentives, the Commission argued 'that the main problem facing many communal areas in this country is one of land husbandry' (Zimbabwe 1982c:62). It suggested that the bane of peasant agriculture was traditional tenure, labour migration and poor farming methods. In the circumstances, the Commission recommended land tenure reform in order to give security and to make farmers responsible for identifiable pieces of land.

¹⁶ For a critique of the Riddell Commission's recommendations, see Gavin Williams (1983) and Bush and Cliffe (1984).

In addition, it recommended the expansion of extension services in order to increase productivity (Zimbabwe 1982c:63).

Following the publication of the Chavunduka Commission's Report, the Ministry of Lands Agriculture and Rural Resettlement published a *Draft Communal Lands Development Plan* (Zimbabwe 1986c) which was critical of communal tenure on the grounds that it promoted sub-division of arable land and resulted in overstocking. Furthermore, the Plan argued that while communal tenure 'shows strong comparative advantages with respect to equity' it has 'a number of disadvantages with respect to growth stimulation' (Zimbabwe 1986c:44). To cure the above defects while at the same time retaining the advantages of equity, the Plan proposed state ownership and allocation of all communal land on the basis of heritable 99-year leaseholds which cannot be subdivided or sold without government permission (Zimbabwe 1986c:46). The limitations of communal tenure were further elaborated by the *National Symposium on Agrarian Reform in Zimbabwe* (Zimbabwe 1987:29). The Symposium observed that cultivators would be encouraged to use their land better if they had security of knowing that they could stay on it. It also noted that individual titles would not be appropriate as they would generate inequality, landlessness, indebtedness, and ultimately a lack of the very security that the system sought to create as peasants lose the land through mortgages of one form or another (Zimbabwe 1987:26). In the circumstances, it recommended that land tenure be guaranteed within communal and resettlement areas on an individual permit basis and that the permits should guarantee succession, prevention of subdivision, abidance by environmental regulations and acceptable land and animal husbandry practices (Zimbabwe 1987:29).

The view that communal tenure acts as a fetter on agricultural productivity and development is shared by the World Bank which argues that 'Agricultural modernization combined with population pressure will make titling necessary' (1989:104). Studies by researchers associated with the World Bank reflect similar views (Feder and Feeny 1991). Essentially, the critique of corporate tenure is based on issues of security, access, and flexibility (Cohen 1980:354). It is argued that the absence of individual rights in land or their subordination to communal rights creates a situation of insecurity which prevents farmers from

adopting innovations or improvements to land. Moreover, without individual ownership, lenders are said to be reluctant to lend without collateral in land, thus constraining the capacity of farmers to produce or improve their productivity. Finally, it is argued that communal tenure inhibits 'the flexibility of land use which is essential to a dynamic farming sector' (Cohen 1980:354). In Zimbabwe the above arguments are supported by farmers' organisations. In the opinion of the Joint Presidents' Agricultural Committee (1990) the defects of communal tenure can be cured by a selective grant of titles to communal farmers who have proved that their operations are on a sustainably productive basis. This is the line supported by the World Bank (1991).

Two contradictory views regarding communal tenure emerge from the above arguments. On one hand, communal tenure is considered to be inimical to investment and therefore productivity because of the alleged insecurity it engenders, while on the other it is considered to be equitable. Both views are questionable. A review of evidence from Kenya, Uganda and Zimbabwe suggests that in some instances titling has increased insecurity of tenure, and that there is no evidence which supports the view that the security which ensues from registration increases investments (Burrows and Roth 1990:289-290). Researchers within the World Bank have also come up with results which do not show any correlation between titling and improved investment (Migot-Adholla et al 1991). The argument about the equitableness of communal tenure is misplaced given the landlessness which characterises communal areas. As argued in the foregoing, the only available land for distribution to new families in the communal areas is grazing land.

Another argument against communal tenure which emerges from the policy documents is the so-called free-rider or the tragedy of the commons problem (Kangai 1994). Beatley (1994:45) observes that:

The free-rider problem stems directly from the nonexclusive characteristics of land use and resource use, and from the perception of individuals that, regardless of whether or not they participate in an economic transaction, they will benefit from the results.

In Zimbabwe, the free-rider problem has been used to explain overstocking and poor conservation of land. The Minister of Lands, Agriculture and Water Development argues that:

The number of cattle that an individual can own is not related to the carrying capacity. This results in overstocking due to ... the 'free-rider' or 'tragedy of the commons'. In economic terms, the full cost of holding extra livestock than the land's carrying capacity is borne by the community at large and there is therefore the incentive at the individual level to keep as many livestock as one can in order to benefit at the expense of the community (Kangai 1994:6-7).

What the above argument conceals is the fact that many households in the communal areas do not own any livestock. As already indicated, the government's solution to both the issue of tenure and conservation is technocratic state regulation of the peasantry. Underlying all the recommendations is a desire to modernise peasant agriculture. The major premise which informs government land use policy is that peasant production processes are traditional and therefore incapable of improving productivity and conserving land. The antidote to traditional land use is considered to be modernisation through technocratic, economistic and statist strategies.

Due to the ambiguities of land rights conferred by communal tenure, the state has been able to intervene in peasant production processes and settlement patterns in order to control them. A good example of such intervention is the villagisation programme which was initiated by the *FFYNDP* (Zimbabwe 1986d). The Plan provided that

the reorganisation of settlement patterns in the Communal Areas will become part and parcel of the resettlement programme. This entails the replanning of land-use patterns in order to attain optimum exploitation of the agricultural resource potential on a sustainable basis ...(Zimbabwe 1986d:28).

Pursuant to the Plan, the Ministry of Public Construction and National Housing launched a rural housing programme which was intended to provide better houses in consolidated villages.¹⁷ Villagisation involves more than the movement of the peasantry into centralised settlements. The reorganisation and replanning contemplated in the *FFYNDP* includes land use. The Department of Agricultural Technical and Extension Services (Agritex) in the Ministry of Lands, Agriculture and Water Development is responsible for land use reorganisation and replanning. Agritex has adopted a technocratic 'top-down' approach which has excluded the participation of local communities (Land Commission 1994a:113). The reorganisation and replanning is reminiscent of the colonial government's centralisation

¹⁷ See Alexander (1994) and Drinkwater (1988).

programme of the 1920s and 1930s. The point that needs to be emphasised is that peasants are forced to move into consolidated villages because of the ambiguities in communal tenure. The villagisation programme has been unsuccessful due to ministerial and departmental conflicts and peasant opposition (Alexander 1994, Land Commission 1994a). The post-colonial state has used communal tenure as a means of controlling the peasant production process and settlement patterns.

Issues of land use and land redistribution have been disaggregated and emphasis has been placed on the former. In the circumstances, state intervention is designed to modernise peasant production processes and communal tenure without land redistribution. Drinkwater (1988:143) correctly argues that the interrelationship between environmental and economic problems and social relations of production are inadequately understood and hence not tackled. In his words:

The result is that the problems which are physical outcomes of social inequalities persist. Even since independence, an acceptance that land apportionment has caused fundamental inequalities in the communal areas, has had little impact on the physicalist and technocratic approach to production constraints in these areas.

Thus, the attempt is to modernise peasant agriculture within the inherited colonial relations of production.

6.4 Customary Tenure and Social Relations in the Communal Areas.

Land tenure is also a reflection of agrarian social relations among rural communities (Neocosmos 1993:67). Customary tenure thus reflects social relations in the communal areas. As argued in Chapter 2, notwithstanding discriminatory colonial agrarian policies, at the end of the colonial era social relations among the peasantry were characterised by social differentiation. Independence brought with it a process of relative democratisation which has increased opportunities for accumulation and social differentiation among the peasantry. A number of studies reviewed in Cousins et al. (1992) indicate that peasants have unequal access to productive resources including land. Access to land, among other factors, accounts for the social differentiation. Cousins et al. (1992) argue that communal tenure constrains access to

larger amounts of arable land for purposes of agriculturally-based accumulation. Thus while communal tenure permits accumulation and social differentiation, it also retards them.

There is evidence that some rich peasants manage to get around the limitations which communal tenure imposes on their ability to accumulate. Weiner (1991) argues that a land-rental market is emerging in the communal areas with successful farmers renting land owned by households who under-utilise all or part of their land as a result of capital and/or labour shortages. He suggests that payment is by way of cash, food and ploughing services. A report in a local daily newspaper provides an example of the land rental market.¹⁸ The report was based on a Zimbabwe Farmers Union (ZFU) field day held at a Mr Anderson Chasakara's 'farm' in Chiweshe communal lands. After attending a Master Farmer training programme, Mr Chasakara joined the ZFU in 1993. The ZFU gave him a tractor, a plough and a disc harrow. He also hired tractors from neighbouring farms. This enabled him to harvest 180 tones of maize in 1993 and he expected to double the figure during the 1994 season. His farming complex was made up of 52,63 hectares of maize, 8,3 of soya beans and 2,9 of edible beans. He also owned 14 head of cattle. The ZFU noted that while fairly small compared to many commercial estates, being able to farm the amount of land in a communal area was a phenomenal achievement. Mr Chasakara obtained the hectarage by 'borrowing land from neighbouring farmers and, it (sic) return, assisting them with their ploughing and planting requirements'.

Thus, as the story of Mr Chasakara indicates, rich peasants are able to get around the constraints imposed by communal tenure by renting land from their neighbours who are unable to utilise it due to lack of capital and/or labour. Land tenure arrangements facilitate land sales and bidding thus allowing the richer peasantry to gain access to more land for purposes of accumulation. By taking advantage of the incapacity of their poorer neighbours to utilise land, rich peasants are able to subvert the limitations imposed by communal tenure on their capacity to engage in expanded reproduction. Rich peasants comprise lineage elites and their relatives

¹⁸ The Daily Gazette of 14 February 1994 under the title 'Communal farmers say: give us the means and we will prove ourselves'.

and some of those with access to remittances from wage labour (Weiner 1991, Cousins et al 1992). Thus the mediation of access to and use of land through community membership underpins a differentiated rural class structure which, according to Cousins et al (1992:11-12), is composed of peasants, worker-peasants, lumpen semi-peasants and the rural petit bourgeoisie.

While the relative democratisation of the political economy has benefited the rural petty bourgeoisie, the failure to transform the inherited relations of production has constrained their opportunities of accumulation. Communal tenure permits worker-peasants to continue enjoying access to and use of land through community membership which they retain notwithstanding their involvement in wage-labour. There are thus interlinkages between wage-labour and peasant agriculture. As the Riddell Commission noted:

In most parts of the peasant sector, most families rely on money from relatives working in towns and there appears to be hardly a family which does not have a husband, son or brother making a regular contribution to relatives in the peasant sector (Zimbabwe 1981b:37).

Remittances from wage-labour are thus essential for the reproduction of worker-peasant households which, according to the Riddell Commission, constituted 235 000 families in the communal areas in 1981 (Zimbabwe 1981b). More important, the linkages between wage-labour and peasant agriculture are central to the accumulation strategy which is predicated on the purchase of labour-power below its value. Capital is thus only partially responsible for the reproduction needs of worker-peasant households, while the households are responsible for those needs which are not met by capital.

In addition to class differentiation, customary tenure also underpins rural gender relations of production. As argued in Chapter 2, the customary tenure that was created by the colonial state was patriarchal in character. In those parts of the country where the liberation struggle was intense, the authority of traditional and patriarchal structures of social control which were supported by the colonial state was undermined and alternative democratic structures replaced them (Ranger 1985, Kriger 1988). Kriger (1988) suggests that as a result of the marginalisation of traditional and patriarchal structures of control, generational, class and gender struggles intensified. The marginalised sections of rural society, including women,

participated in the alternative structures. However, the gains made during the war were reversed by the conservative restoration that occurred soon after independence (Ranger 1985). Phimister (1988b:13) argues kulaks and other 'respectable' members of the community were heavily represented in the two liberation movements and made significant gains even before the war ended. He suggests that they ensured that gender issues were mostly contained within traditional norms.

Notwithstanding the reversal of gains made by women during the war, a number of important enactments which address women's concerns have been introduced. In 1982 the government enacted the *Legal Age of Majority Act (No.15 of 1982)*. Until its enactment, African women were regarded as perpetual minors under customary law, with the result that they lacked legal capacity. The Act gave African women above the age of 18 majority status and therefore the same legal capacity as men and white women. Utterances by politicians during the debates that followed the enactment of the Act and its interpretation by the courts suggest that it was only intended to give women the right to vote and that any other consequences were unforeseen and regretted. At a meeting with chiefs, the then Prime Minister indicated that the Act had been passed in order to enable women to vote and that interpretations by the courts had not been foreseen. He added that the government was 'reviewing the law to see if it can be amended' (quoted in Jacobs and Howard 1987:32). The Prime Minister's utterances reflect the ideology of neo-traditionalism.¹⁹ In 1985 the government enacted the *Matrimonial Causes Act (No.33 of 1985)* which provides for equitable distribution of matrimonial property upon divorce.

While the above enactments have made significant improvements in the position and status of women, some of them unintended, they hardly address gender relations as aspects of social relations which need restructuring and transformation. This is not surprising given the neo-traditional ideology which has been adopted by the ruling class. Jacobs (1992) observes that it is rare for state agencies to consider women's concerns as existing outside the spheres

¹⁹ His views should be contrasted with his speech at the ZANU Women's seminar during the war where he condemned patriarchal domination within traditional society (1983:70).

of biological reproduction and the reproduction of labour. The result is that gender issues are typically confined to institutions such as divorce law, child-care provision, health and education. This is certainly true of the manner in which the Zimbabwean state has approached the gender question. Impressive strides have been made in the area of marriage and divorce law, post-marital maintenance, etc.

The same, however, cannot be said of the restructuring of gender relations outside the marriage. In the rural areas, gender discrimination continues to be enshrined in 'customary' legal forms. The Constitution provides a blanket institutionalisation and recognition of customary law. The PF's constitutional proposals did not contain any provisions which would have ameliorated the inequities of the patriarchal customary law. The protection provided by the Constitution against discrimination does not extend to laws relating to the application of African customary law (section 23).²⁰ In addition, the Constitution does not provide protection against discrimination on the grounds of gender.²¹

Thus in the communal areas women's access to land continues to be regulated by the patriarchal customary law. The *Communal Lands Act (No 20 Of 1982)* is silent on women's rights of access to land. All it provides is that the right to occupy and use land extends to spouses and dependents (section 14), while the *Communal Land (Model) (Land Use and Conservation) By-law, (SI 166 of 1985)* defines the owner of cultivated land as any person who has a right to the produce of land, including wives of such a person (section 3). The above provisions seem to be predicated on the view that women have secondary rights which derive from those of men. Both traditional institutions and VIDCOs allocate land to male spouses in accordance with customary law.²²

²⁰ In contrast see Clause 33 (2) of the Constitution of the Republic of South Africa which provides that no law, whether a rule of common law, customary law or legislation, shall limit any right entrenched in the Constitution.

²¹ In contrast see Clause 8 of the Constitution of the Republic of South Africa which provides protection against discrimination on the grounds of, among other things, gender.

²² Participants at the Workshop on Women and Land complained that in most cases the requirement that there should at least be a woman on the VIDCO representing women's interests has been taken to mean that there should only be one woman member. In any event, without a change in the customary rules of tenure, increased female representation would be meaningless.

Hence women continue to gain access to land through men. In worker-peasant households which can only reproduce themselves through a combination of the production of agricultural use values and the sale of labour power, the burden of producing agricultural use values continues to fall on women. Their access to land is still mediated through their husbands who are away most of the time selling labour power below its value to capital. With the fall in the value of wages as a result of the economic recession, the labour burdens on women have increased as worker-peasant households experience the reproduction squeeze.

In households which engage in accumulation, family labour continues to be relied upon in addition to limited hired labour. Rather than purchase labour power, men usually marry additional wives in order to increase the capacity of family labour. A good example is Mr Chasakara whose 'success' story is discussed above. He is assisted in the running of his 'farm' and two general dealers stores and one butchery by his family of *five wives and thirty-two children* (emphasis provided). Mr Chasakara and his ilk represent the class position of capital in the petty commodity producing household, while the wives and children represent the class place of labour.

The mediation of women's access to land through men has serious consequences for households which are headed by women. Generations of labour migration and the disruption of war have created many women-headed households (Bush and Cliffe 1984). Moyo (1994) observes that single, separated and *de facto* women heads of households increasingly constitute a major category of those in need of land. Since 'customary' tenure sees the land rights of women as mediated through men, such households are denied access to land in their own right.

In the case of married women, the spread of commodity relations has eroded the secondary rights of access to land which women enjoyed under pre-colonial customary tenure. The customary legal form that women are allocated their own pieces of land by their husbands upon marriage has been transformed as a result of the intensification of commodity relations. The right is subject to the whims and caprices of the husband. The woman can no longer claim the land as of right.

With respect to divorce, the customary position is that divorce extinguishes whatever rights of access the woman had to her husband's land. Cousins (1990) argues that divorced women and widows can often retain the holdings they originally had access to only through their husbands. Whatever the informal position may be, in the case of *George Khoza and Thembekile Khoza*²³ the High Court held that after divorce the wife has no right to live in her husband's communal area. Upon divorce a woman is expected to return to her natal home where she is supposed to have access to land through her male relatives. The provisions of the *Matrimonial Causes Act (No. 33 of 1985)* on equitable distribution of matrimonial property upon divorce are of little help to divorced women as regards continued access to the husband's land since land in communal areas vests in the state and therefore does not constitute part of the matrimonial estate. Under customary law, widows normally remain on the land which was vested in their deceased husbands (Land Commission 1994b 1994). However, the rights of widows are not secured by law. Consequently widows are vulnerable to evictions by the deceased husband's relatives.

Conclusion.

This chapter has shown that agrarian reform in the communal areas has been shaped by a number of cross-cutting and contradictory ideologies and policies. It has been shaped by the impact of the war on local government and rural administration. As a result of the war, elected local government structures replaced unelected traditional institutions which had been bolstered by the colonial state. The local government structures, however, did not strengthen popular structures which developed during the war because the latter were autonomous from both state and party control. Hence, they were not suitable for rural administration which emphasised control rather than popular participation. The effectiveness of elected local government structures was undermined by the support given to chiefs and their traditional subordinates by the government and politicians.

²³ HC-B-106/1987.

The chapter has also shown that local government institutions continue to administer and allocate land in the communal areas. The allocation of land is supposedly based on customary law. Because of the support that the government has given to traditional institutions which had authority to allocate land during the colonial era, there is an institutional overlapping and conflict in the allocation of land. Moreover, the customary tenure that is supposed to regulate land allocation is unclear. The actual land holding practices of the peasantry differ from the official version of communal tenure. Over the years individualisation and commoditisation of land have occurred. This is not recognised in the official version of communal tenure.

In addition, this chapter has shown that the post-colonial state, like its colonial predecessor, uses communal tenure for purposes of statist and technocratic regulation of peasant production processes and settlement patterns. Statist regulation is predicated on the assumption that peasant production processes and communal tenure are traditional and therefore inimical to improved productivity and proper land use. The objective of regulation is thus to modernise peasant agriculture and communal tenure. Finally, the chapter has shown that communal tenure underwrites rural social relations. It underwrites class and gender relations among the peasantry. Statist regulation of the peasantry has not been the only strategy that the government has employed in its attempts to modernise the peasant agriculture. It has also tried to achieve the same purpose through green revolution type of reforms. These reforms are the subject of the next chapter.

CHAPTER 7.

INSTITUTIONAL REFORM AND ACCESS TO MARKETS.

Introduction.

The last chapter argued that agrarian reform in the communal areas has been based on the disaggregation of land use policy and land redistribution. The state has placed emphasis on modernising peasant land use practices rather than on land redistribution. It has also attempted to modernise peasant agriculture through institutional reforms which encourage peasants to adopt input, marketing and credit packages. The packages, which were originally designed for settler farmers during the colonial era, have been extended to peasant farmers. This chapter analyses policies and laws which have facilitated the extension of the packages to the peasantry.

The chapter shows that the extension of input, marketing and credit services was initially designed to eliminate discriminatory colonial policies which denied African farmers access to the services. It demonstrates that the policy to extend the packages was an element of the growth with equity strategy and was intended to promote productivity and facilitate peasant accumulation. The chapter argues that the assumption that peasants would respond to incentives contradicts the assumption that they are traditional producers which underpins policies and practices designed to modernise peasant agriculture through technocratic methods.

In addition, the chapter shows that Zimbabwean agricultural policies do not fit into the interest group theoretical framework which has been popular in explaining the poor state of African agriculture since the early 1980s. It argues that the extension of input, credit and markets packages to the peasantry represents attempts to modernise peasant agriculture by integrating it into institutions which were originally designed to foster capitalist accumulation in agriculture. As such, access to the services was intended to proceed in tandem with land redistribution. It shows that after the prolonged drought of 1982 to 1984 agricultural seasons, the government emphasised the improvement in productivity through, *inter alia*, market integration rather than land redistribution.

Furthermore, the chapter analyses the response of the peasantry to the extension of input, marketing and credit facilities. It shows that peasant marketed surpluses increased considerably in response to the extension of packages. It also demonstrates that only a small number of peasants have benefited from the packages. The chapter argues that the reforms have accelerated social and spatial differentiation among the peasantry. It also argues that attempts to modernise peasant agriculture through input, marketing and credit reforms without land redistribution have produced contradictory results. Finally, the chapter examines the impact of the structural adjustment programme on modernisation programmes.

7.1 Institutional Reform.

Chapter 2 has argued that one of the measures adopted by the colonial state in order to create conditions for capitalist accumulation in agriculture was the discriminatory provision of input, marketing and credit services to settler and African farmers. Hence until independence African producers were largely excluded from input, marketing and credit services which were offered to their white counterparts. After independence the state sought to extend the existing marketing and credit services to African farmers in order to improve productivity and promote accumulation. During the 1980s the extension of services and the consequent improvement in peasant productivity were hailed as a success and appear to have taken the steam off and shifted attention away from land redistribution.

The policy objectives which informed the extension of input, marketing and credit services to the peasantry were articulated in the *TNDP* (Zimbabwe 1982a). In addition to land redistribution, the government stated its policy objectives in agriculture to be, *inter alia*, the achievement and maintenance of food self-sufficiency and regional security; the extension of the role of agriculture as a major foreign exchange earner and source of inputs to industry; and the integration of the commercial and peasant agricultural sectors into a national agricultural system. The above objectives were to be achieved through, *inter alia*, the reform and expansion of structures of complementary services including agricultural credit, marketing, research and extension; and the pursuance of appropriate agricultural pricing policies. In the main, the government sought to reorient the functions of the input, marketing and credit

institutions which had been established during the colonial period to facilitate capitalist accumulation in agriculture. Their new remit included the extension of their services to the peasantry in order to improve productivity and promote accumulation. It was assumed that since the institutions had successfully facilitated capitalist accumulation, they would equally facilitate peasant accumulation. The new remit fell into, and was consonant with, the 'growth with equity' policy framework.

The integration of peasants into input, marketing and credit institutions was predicated on the assumption that they would respond to the incentives by increasing productivity. Underlying the extension of services to the peasantry was the assumption that they were rational producers who were capable of producing marketable surpluses if given the right incentives. As the Chavunduka Commission (Zimbabwe 1982c:12) pointed out, in the colonial period, policy concerning the communal areas was guided by a series of widely held but unfounded myths; the most pervasive being that the communal farmer was unresponsive to economic incentives. The extension of agricultural support services to the peasantry was thus designed to reverse the colonial myth. However, as argued in the foregoing chapters, agrarian reforms in the resettlement and communal areas have largely been predicated on the assumption that peasant production processes are subsistence oriented. In other words, they have been predicated on the same myths which informed colonial policies. Hence the attempt to increase productivity through technocratic and statist methods. The assumption that peasants respond to incentives contradicts the assumptions that their production processes are subsistence oriented.

Initially, the integration of the peasantry into the inherited agricultural institutions and the consequent improvement in productivity was intended to proceed in tandem with land redistribution as conceived of within the parameters of the 'growth with equity' policy framework. With time, however, the improvement of peasant productivity became the centre-piece of agrarian policy (Wiener 1991). The prolonged drought of the 1982/83 and 1983/84 agricultural seasons made the government risk-averse as far as land redistribution was concerned. As a result, land redistribution was de-emphasised while productivity in both the resettlement and communal areas became the overriding concern. In the circumstances, the

government sought to improve peasant productivity through integration into established service institutions and land use reforms (Drinkwater 1988:121-2). Agricultural policy making became informed by the conventional neo-classical ideology of the peasant rationality school with its emphasis on price incentives. Working on the assumption that small-scale individual farms were the optimal production scale, policy-makers emphasised methods of improving peasant productivity (Wiener 1991).

7.2 Institutional Reform and Agricultural Modernisation.

The integration of peasants into agricultural input, credit and marketing institutions and the consequent improvement in productivity has made Zimbabwe's agricultural policies an exception to the general policies of Sub-Saharan Africa which have undermined the viability of agriculture. From the early 1980s interest group theory has been employed in order to explain the agricultural policies of Sub-Saharan Africa. Interest group theory views

both societal interest groups and elected (and non-elected) government officials as purely self-interested, with the latter predominantly concerned to maintain power by attracting and rewarding supporters and favouring certain groups (Healey and Robinson 1992:51).

The major proponent of group interest theory on governmental agricultural policies in Sub-Saharan Africa is Bates (1981, 1983) who suggests that state intervention has adversely affected productivity. He argues that the state intervenes to set producer prices which discriminate against agriculture for a number of reasons. First, the state seeks to maintain low-cost food supplies to the cities because urban consumers and producers are highly sensitive to the cost of food and are able to organise and defend their interests. Hence the state tends to be more responsive to their demands than to those of small farmers who have problems in organising themselves for the collective pursuit of their interests. Consequently, price policies tend to favour urban consumers and producers at the expense of small farmers.

Second, low producer prices are paid to farmers in an attempt to promote import-substitution industrialisation. Monopsonic marketing boards pay farmers prices below international ones in order to accumulate the difference which is then invested in the construction of projects of primary benefit to the urban industrial sector. However, marketing

boards which are formed by the farmers in conjunction with the state tend to be more responsive to the interests of agricultural producers. Low prices for industrial raw materials are also used to attract industrial investment in the processing of agricultural goods.

Third, the adoption of import-substitution industrialisation has given rise to trade and exchange rate policies which are prejudicial to the interests of agricultural producers. One such policy is the over-valuation of the currency which is designed to facilitate the cheap importation of capital equipment in order to promote import substitution industrialisation. The effect of such policies is to reduce the incomes of export agriculture. Over-valuation of the currency also lowers the price of imported foodstuffs thus exposing local producers to unfair foreign competition. The overall effect of the over-valuation of the currency is to tax agricultural producers, and conversely, to subsidise urban producers and consumers. Group interest explanations of agricultural policies in Sub-Saharan Africa have been adopted by the World Bank (1981, 1989) and inform agricultural sector reforms under SAPs.¹ SAPs are designed to reverse the alleged urban bias inherent in import-substitution industrialisation policies by changing the rural-urban terms of trade in favour of the peasantry and thus promoting the production of tradables.

Zimbabwe's agricultural policies do not fit into public choice explanations (Skalnes 1989, Herbst 1990)². As argued in the foregoing, at independence the government adopted policies which were intended to rectify and redress inherited imbalances which excluded peasants from input, marketing and credit services. Both Herbst and Skalnes argue that the Zimbabwean state enjoyed autonomy from interest groups in the formulation of its agricultural policies. While their concern is with the policy making process, this chapter is concerned with the policy objectives which informed the extension of input, marketing and credit services to the peasantry and the impact on peasant relations of production, that is, on relations of production among the peasantry and between the peasantry and the state.

¹ The policy reforms that the World Bank prescribes as part of SAPs are intended to reverse the supposedly debilitating effects of interest group influence on policy making.

² Skalnes' empirical research in Zimbabwe did not confirm Bates' theory. For a detailed analysis, see Skalnes (1989).

A suitable explanation for the institutional reforms is provided by Bernstein (1990b) who argues that the integration of the peasantry into markets is calculated to modernise peasant agriculture. He defines agricultural modernisation as a conception that is often presented simply as technical progress, that is the growth of output and productivity, but which is intrinsically connected with commoditisation, that is the development of commodity production, markets, and divisions of labour. Looked at from this perspective, the strategy adopted by the government of Zimbabwe sought to

'lock in' peasants ... through agribusiness style integration, 'modernising' their farming through higher- and controlled- levels of input and credit use, and controlling (increased) output through the organisation of marketing and processing, thus achieving greater commoditisation, specialisation, and standardisation' (Bernstein 1990b:8-9).

Many African states have attempted to modernise peasant agriculture along the similar lines. The difference, however, is that the Zimbabwean government has not used marketing boards as a vehicle for extracting surplus from agricultural producers through unequal exchange. In Zimbabwe, the strategy of extracting surplus value through unequal exchange would have had to be extended to capitalist farmers in order to avoid discrimination. Given the forward and backward linkages between capitalist agriculture and secondary industry, such a strategy would have been immensely unpopular and disastrous. Moreover, such a strategy would have had adverse consequences on food self-sufficiency. In the circumstances, the only sensible option was to integrate the peasantry into existing service institutions in order to remove discrimination and promote commoditisation. The next section analyses the process of integrating the peasantry into agricultural marketing and credit institutions.

7.3 Law and Institutional Reform.

The improvement of peasant productivity through input, marketing and credit reforms has been considered as one of the successes of post-colonial agrarian reform. This section examines the extension of marketing and credit services to the peasantry. At independence, the marketing of the main crops grown in Zimbabwe, except sugar and tea, was controlled by parastatal marketing boards whose origins and development are discussed in Chapter 2. Except for the Tobacco Marketing Board, the other boards fell under the aegis of the

Agricultural Marketing Authority (AMA) which was established in 1967 in terms of the *Agricultural Marketing Authority Act (Chapter 102)*.³ Until 1991 the AMA's mandate included constituting the membership of the Marketing Boards and the general regulation of the marketing of regulated agricultural crops.

Until the deregulation of agricultural marketing in 1993, the AMA regulated the marketing of agricultural products through the Grain Marketing Board (GMB) and the Cotton Marketing Board (CMB) which were mandated to purchase all controlled or regulated crops which were offered for sale. The GMB was established in terms of the *Grain Marketing Board Act (Chapter 113)*, while the CMB was established in terms of the *Cotton Marketing and Control Act (Chapter 106)*. Until recently both enactments regulated the pricing of products marketed by the Boards. Chapter 113 authorised the Minister to fix the price or prices payable by the GMB during the twelve months following the 1st of April in that year for any controlled product which was sold to or acquired by the Board. Chapter 106 had a similar provision which authorised the CMB, with the approval of the Minister, to fix the prices payable for seed cotton harvested and delivered in that year to the Board.

After independence the government extended the application of the marketing laws to cover the peasantry. The assumption was that the peasants would respond to market incentives by increasing productivity. Improved output would not only improve the lot of the peasantry, but would also make significant contributions to the economy by ensuring food self-sufficiency and by generating additional foreign exchange. Perhaps what should be emphasised is that the modernisation of peasant agriculture which the government introduced had the effect of controlling the peasant production processes by locking them into state capitalist enterprises. This was bound to create new relations of production between the peasantry and the state capitalist enterprises.⁴ Depending on the circumstances of peasant households, such

³ See Chapter 2 for a discussion of the origins of the Agricultural Marketing Authority.

⁴ Cliffe (1987) correctly argues that the financial intensification of peasant production means that relations with the state and/or capital as a supplier of inputs is in every sense a relationship of production.

relations could either be beneficial or impose new pressures.⁵ For the richer peasantry the new relations were beneficial as they opened new avenues for accumulation.

The government's modernisation approach was consonant with that of development aid organisations. Breslin (1994) provides an interesting analysis of how the government's programme to integrate peasants into agricultural markets coincided with that of the United States Agency for International Development (U.S AID). U.S AID proceeded from the premise that Zimbabwe's agricultural sector was dualistic in nature and was composed of a vibrant and highly developed capitalist sector characterised by high yields, a sound infrastructural basis and contributing disproportionately to the overall economy on one hand, and an African sector which was 'characterised by low yields, low levels of technology, low levels of purchasing inputs and a deteriorating natural resource base' on the other (Breslin 1994:84). In the circumstances, U.S. AID's prescribed solution was to expand the existing market structures in order to bring them within the reach of the peasantry. Hence U.S.AID provided funding for the construction of GMB depots. The objectives behind U.S AID's assistance were two-fold. First, the funding of depots 'offered the United States an avenue into the policy decision-making in Zimbabwe's agricultural sector' (Breslin 1994:86). Second, the expansion of markets and the consequent increased productivity served the United States' ideological objectives of promoting market-oriented reforms.

The integration of peasants into marketing institutions was complemented by the extension of agricultural credit. At independence the state provided credit to agriculture through the Agricultural Finance Corporation (AFC) which was established in terms of the *Agricultural Finance Corporation Act (Chapter 101)*. The functions of the AFC include making advances to any person for any purpose which is incidental to or connected, directly or indirectly, with the production, processing, storage, packing or marketing of any produce obtained from agriculture. For purposes of extending credit to the peasantry, the government relied on a provision of the Act which authorises the AFC to render assistance to persons

⁵ Bernstein (1988) observes that peasants may benefit from certain relations with capital and the state.

engaged in or about to engage in agriculture in accordance with the provisions of any Scheme (section 22 (1) (b)).

The Act authorises the Minister responsible for agriculture to establish any scheme for the provision of assistance to persons engaged or about to engage in agriculture. Every scheme has to specify the name of the scheme and is required to provide for the classes of persons who are eligible for assistance; the terms and conditions subject to which assistance may be granted (section 52). Schemes are funded from moneys which have been appropriated for the purpose by the Legislature and from loans raised by the AFC (section 54). The government underwrites all loans made under any Scheme and thus indemnifies the AFC against any losses it incurs (section 55).

In 1981 the Minister used her statutory powers to establish the *Agricultural Finance Corporation (Small Farm Credit Scheme) Notice 1981 (SI 336 of 1981)* which established the Small Farm Credit Scheme. The Scheme replaced a pre-independence pilot scheme which provided assistance to a small number of purchase area and communal area farmers. The beneficiaries of the Scheme are farmers engaged or about to engage in agriculture on communal land; or on any land which was classified as purchase land (section 3). To be eligible for assistance a farmer or group of farmers has to satisfy the AFC that there is a reasonable prospect of any advance made to her or them being repaid in full; that the farming operations conducted by her or them will be adequately supervised and managed; that the cropping programme she or they will undertake is economically and ecologically sound (section 4). When making an advance to a group, the AFC is required to obtain from each farmer in the group a written acknowledgement of debt in terms of which each farmer undertakes liability for the payment of the full amount advanced to the group (section 5).

A second Scheme was established by the Minister in terms of the *AFC (Resettlement Credit Scheme) Notice 1982 (SI 685 of 1982)*. The beneficiaries of the Scheme are resettlement area farmers (section 3). The criteria for eligibility are that the farmer or each member of a group of farmers has been a farmer for not less than one year and not more than four complete farming seasons; and that the farming operations conducted by her or them are adequately supervised or managed. In addition, there should be report issued by an officer in

the Ministry of Lands, Agriculture and Water Development after consultations with an officer in the Department of Agricultural, Technical and Extension Services, to the effect that the farming programme which she or they will undertake is economically and ecologically sound; and that the composition of the farming inputs applied for by her or them is suitable to achieve that programme (section 4).

Both Schemes incorporate Parts IV and V of Chapter 101 which relate to securities and remedies for breaches of loan agreements. The AFC makes three types of loans - long, medium and short term. Long term loans are granted for periods of 6 to 30 years for such purposes as purchasing land, the erection of buildings and installation of improvements such as dams and irrigation schemes. The loans are made against collateral in the form of freehold land and therefore are beyond the reach of most peasants since they do not have freehold title to the land they occupy. Medium term loans are granted for periods of 2 to 6 years for purposes of purchasing irrigation equipment, stock watering facilities, fencing, bush clearing, agricultural machinery and livestock. They are usually granted against the security of notarial bonds over movable property or by the reservation of ownership rights by the AFC over the livestock or implements purchased.

Short term loans are granted for a year for such purposes as crop production including land preparation, the purchase of inputs, harvesting, transportation, and marketing expenses. Until the deregulation of the marketing system, credit was unsecured and the AFC was protected by the *Stop Order Act (Chapter 110)*. The Act requires the farmer to grant the lender, who is called the holder, a stop order on the proceeds of the sale of her crops. The stop order binds the 'addressee' (the buyer of the farmer's crops) to pay the proceeds of the farmer's crops to the lender until the farmer's indebtedness is discharged. Before the deregulation of the marketing system, the GMB and the CMB used to be the main addressees of stop orders held by the AFC. After independence, the Act was amended to make provision for special stop orders. A special stop order is defined as an unregistered stop order which has been executed by a farmer who farms within communal land or such other area as may be prescribed and of

which the payee is the AFC. In terms of the *Farmers Stop-Orders (Special Stop Orders) (Prescribed Areas) Regulations, 1985 (SI 298 of 1985)*, all resettlement areas are prescribed areas for purposes of the definition of special stop orders.

The extension of credit was also predicated on a modernisation approach as was the extension of marketing services. In accordance with its 'growth with equity' policy framework, the government assumed that the availability of credit would promote peasant productivity thereby reducing poverty and contributing to the growth of the economy. As with the extension of marketing services, the government's modernisation approach coincided with that of bilateral and multilateral donor and lending institutions. Thus a number of organisations such as the World Bank, KfW, IFAD, EEC, BADEA, DANIDA provided the AFC with funds at concessionary rates to lend to the peasantry (AFC 1986).

7.4 The Impact on Peasant Social Relations.

Judged on the basis of the scale of expansion in the provision of marketing and credit services and the increase in peasant productivity, the institutional reforms have been successful. The number of producers registered with the GMB rose from 28 160 in 1979 to 490 000 in 1989, while the number of GMB depots rose from 38 in 1980 to 70 in 1990 (World Bank 1991). In addition to the depots, the GMB established seasonal collection points and appointed approved buyers. The CMB opened up eight depots in the communal areas (Thomson 1988). Similar successes were achieved in the provision of credit. On the eve of independence in 1979 the AFC granted 4 348 loans to small farmers. In 1985 the number of loans peaked at 93 961 (World Bank 1991). From 1985 the number has been declining and in 1993 a total of 20 973 loans were granted to communal, resettlement and small scale commercial farmers (AFC 1994). In value terms, the AFC's lending to small scale farmers grew fast between the 1980/81 season and the 1986/87 season when it peaked. From then lending has been in decline and, in real terms, the 1991 lending was below the 1983/84 level (World Bank 1991). In nominal terms the value peaked in 1987 and then declined up to 1991 and then started rising again.

However, the increase in nominal terms was only due to inflationary conditions prevailing in the economy.⁶

The expansion in the provision of marketing and credit services appears to have contributed to improved productivity. Since independence, peasant output of maize and cotton has more than doubled while marketed output of the two crops rose from less than 15% to over 50% of total marketed output within seven years. Peasant farmers have increased their contribution to the nation's food supplies. Consequently, Zimbabwe's agricultural policies have been adjudged as successful.

It is, however, important to avoid being seduced by the impressive figures into ignoring the limitations of the strategy of modernisation. Bernstein (1990b) argues that the option of modernising peasant agriculture through market integration is likely to accelerate spatial or regional as well as social differentiation. In the Zimbabwean context, the above observation is confirmed by Weiner (1988) and the World Bank (1991) which notes that household market participation is affected by socio-economic differentiation and that there is a positive correlation between production per capita and amounts and proportions marketed. Hence it is the richer peasants who own or have access to the means of production who have benefited most from agricultural modernisation.

Furthermore, the extension of marketing and credit services has accelerated and accentuated gender differentiation. Until the deregulation of marketing controls in 1993, the law required producers to register with the GMB and the CMB as a condition precedent for the marketing of regulated crops through the boards. Registered producers were issued with cards which entitled them to sell their produce through the respective boards. The significance of the cards lay in the fact that they entitled the person in whose name they were issued to receive payment of the proceeds of the crops marketed through the boards. Initially, the cards were issued in the name of the male spouse as the holder of the land and the head of the household. This, therefore, entitled him to receive payment for crops sold through the boards. The practice thus gave men control of the proceeds of marketed crops despite the fact that

⁶ From a personal communication with the Planning Manager of the AFC.

they were produced through family labour. Women successfully agitated for changes which would entitle them to have cards issued in their names so that they too could sell their produce through the boards and receive payment (Batezat and Mwalo 1989).⁷

An additional significance of the cards lay in the fact that they entitled the holder to loans from the AFC. The cards were evidence that a producer was registered and therefore would sell her produce through the marketing boards. In terms of the *Stop Order Act* the board was bound to pay the proceeds of the farmer's crops to the AFC until her indebtedness was discharged before making payment to her. The cards were thus a *sine qua non* for access to credit. Since the cards were issued in the name of the male spouse, it meant that women were denied access to credit. While the issuing of cards in the name of the female spouse benefited women, it would appear that men used it to evade debt obligations to the AFC (Maboreke 1990).

There have been other constraints on women's access to credit. Lack of access to land inhibits women's access to institutional credit (World Bank 1991). As argued in Chapters 5 and 6, tenure systems in both the communal and resettlement areas discriminate against women in the allocation of land. In model A resettlement schemes, only the permit holder is entitled to apply for AFC credit (Chenau-Repond 1994). As indicated in the foregoing, the AFC's communal area credit is concentrated among farmers who produce cotton and maize by relatively high input intensive methods. Female-headed households tend to be among the poorest and therefore are unlikely to be among the lucky few who have benefited from the AFC's credit.

Apart from the obvious disadvantages that women face as regards access to market and credit services, there are other less obvious gender-biased effects of the modernisation strategy. The integration of peasants into state capitalist marketing and credit institutions has created opportunities for accumulation and hence increased the demand for labour. In most cases, the increased demand is met through the intensification of family labour. Women and

⁷ While the changes did occur, it would appear that they have not benefited all the women. At the Workshop on Women and Land which is referred to in Chapter 6, some women indicated that they had not had cards issued in their names.

children bear the brunt of labour intensive aspects of increased production for the market such as weeding. Thus attempts to modernise peasant agriculture without a corresponding restructuring of relations of production has intensified gender differentiation. Peasant production is generally dependent on family labour except in those households which have broken into expanded reproduction and have extended their means of production beyond family labour. Patriarchal household labour processes therefore continue to underpin the integration of peasant production into state capitalist market structures.

The strategy has also accelerated spatial differentiation. For example, during the 1983-84 agricultural season, two-thirds of marketed maize from the communal areas came from the better agro-ecological regions (Moyo 1986). This trend was replicated in model A schemes (AMA cited in Weiner 1991). Households in the lower rainfall areas and those with lower incomes give high priority to retaining output in case of a bad harvest (World bank 1991). The commoditisation of peasant agriculture is proceeding unevenly, thus accelerating spatial and social differentiation. Many peasant households continue to experience the simple reproduction squeeze as evidenced by high levels of child malnutrition and dependence on food distributed by the state (Loewenson 1990, 1992, Cousins et al 1992).

Evidence suggests that the provision of agricultural credit has also contributed to the acceleration of spatial as well as social differentiation. A number of studies which are analysed by the World Bank (1991) indicate that the AFC's communal land credit is concentrated among those farmers producing cotton and maize by relatively input intensive methods. These farmers are located in the better agro-ecological regions. There is therefore a marked bias in the provision of credit towards the better agro-ecological regions which has accelerated spatial and regional differentiation. The AFC confirmed that the nature of an agro-ecological region has a bearing on its seasonal and medium term land use patterns. For example, it does not lend for maize production in the drier areas of the country.⁸

The use of pricing policy to modernise peasant agriculture has been problematic. In the case of maize the government has tried to use the price mechanism as a flexible tool for

⁸ Personal communication with the Planning Manager of the AFC.

promoting or discouraging production depending on the circumstances. Thus soon after independence it reverted to the post-planting announcement of prices which the Rhodesian government had abandoned in the mid-1970s. This gave it the flexibility to fix prices after the crops had been planted and after it had an idea of prospective production levels. Soon after independence the government introduced high prices for maize in order to promote productivity. For most of the 1980s, however, prices of maize remained stagnant. Even then, these prices were above those obtaining in international export markets (World Bank 1991). Marketing boards paid higher prices than those obtaining in export markets because of government policy to ensure food security. The higher prices paid by the boards and the losses uncurred in the export markets were met through subsidies. In the context of the balance of payments disequilibria of the early 1980s, the government also used controlled prices in order to encourage the agrarian bourgeoisie to produce foreign exchange earning crops such as tobacco and oilseeds and in the process, to leave the production of maize to the peasantry, the resettlement and small scale farmers (Weiner 1991, World Bank 1991).

Attempts to modernise agriculture through pricing policy have therefore produced contradictory results. The dominant position of the agrarian bourgeoisie has been further enhanced as a result of price incentives which have encouraged them to produce foreign exchange earning crops. Peasants on the other hand, have been integrated into national maize and cotton markets. The dominant position of the agrarian bourgeoisie is further enhanced by the fact that they still get the lion's share of the available agricultural credit. The AFC has increased its loans to the agrarian bourgeoisie from 69% in 1981 to 81% in 1993 while loans to the communal sector have declined from 24% to 11% in the same period (Mhone 1994:21).

Yet another limitation of the strategy of agricultural modernisation has been the poor credit repayment performance of the peasantry. After an initial expansion in both the number and value of the loans, there has been a marked decline in both figures as indicated in the foregoing. By January 1, 1990, 68% of the small scale loan portfolio, 80% of the communal farm loan portfolio and 77% of the resettlement farm loan portfolio were in arrears (World Bank 1991). A farmer's previous credit record with the AFC is taken into account in assessing her ability to use credit. Where there has been a default, assistance is only given where the

default was beyond the borrower's control (AFC 1984). In its 1990 annual report, the AFC observed that the impact of the droughts had resulted in some small farm sector clients being unable to service their previous debts and that this makes it difficult for the AFC to extend further assistance (AFC 1990).

The recurrent droughts expose the environmental and spatial constraints on attempts to modernise peasant agriculture through the extension of credit and market facilities without land redistribution. Since most peasants are confined to the poorer agro-ecological regions, they are more susceptible to recurrent droughts than the agrarian bourgeoisie who farm in the better agro-ecological regions. Moreover, peasants have no access to irrigation schemes which would mitigate the deleterious effects of recurrent droughts. In years of drought, peasants are unable to repay their loans and hence become ineligible for further loans from the AFC.

Attempts to modernise peasant agriculture through the expansion of credit services has been costly for the government which has had to subsidise the higher unit costs incurred in providing credit to many small scale farmers. In addition, the government has had to guarantee all the loans. Loans are considered as bad debt after three years in which there has been no significant repayment by the borrower. At this point government guarantees are called. The AFC has an obligation to continue to demand payment from the borrower which, if paid, is offset against future bad debt claims on the government. In 1987 the AFC's refund from the government rose steeply from Z\$6,8 million to Z\$24,6 million. The figure rose to Z\$37,6 million in 1989 (World Bank 1991).

In an attempt to improve the loan recovery rate, the AFC has introduced group lending and group responsibility for the repayment of the loan.⁹ As an incentive to groups which repay their loans in one season, the AFC reimburses them three percent of the amount of the loan. While the initial groups were formed by the AFC, recently it has started focusing on existing groups. Some of these groups are supported by Non-Governmental Organisations (NGOs). Where the group is supported by an NGO, the AFC either deals directly with the NGO which

⁹ According to the Planning Manager of the AFC group lending has been very successful.

guarantees the loans to the group or it lends to the NGO which then lends to the group. The AFC's exposure is thus reduced.¹⁰

The extension of credit to the peasantry has raised issues of security for the loans. Contrary to the arguments of the World Bank (1991) that the stop order system did not provide adequate security, the AFC argues that until the deregulation of marketing control, the system used to be the best recovery method.¹¹ Whatever the position, peasants adopted several methods of evading the stop order system. They either marketed their produce through relatives who did not owe any money to the AFC, or they engaged in 'side-marketing', that is, they sold to private traders (World Bank 1991). Alternatively, they produced crops such as vegetables whose marketing was not regulated (Zimbabwe 1993). The expansion of credit imposed additional work on both the GMB and the CMB as addressees of stop orders. Consequently, the processing of many stop orders delayed payment of the proceeds to the farmers. Side-marketing thus had an added advantage because farmers received cash payment.

Thus the strategy of modernising peasant agriculture has had mixed results. Undoubtedly, it has certainly facilitated peasant accumulation and has increased their contribution to the economy. It is, however, only a small percentage of the peasantry who have benefited from the strategy as indicated by the evidence of spatial and social differentiation which has occurred in the communal areas since independence. Without a concurrent restructuring and transformation of property and production relations, the benefits of the strategy have been beyond the reach of the majority of the peasantry who lack the means of production. Even the capacity of those who have been able to accumulate has been constrained by the inherited colonial property relations which continue to limit their access to additional land.

More important, the adoption of the strategy of modernisation reflected a failure to appreciate the nature of peasant social relations of production. If those in control of the state had appreciated that peasants are a differentiated social category, they would have appreciated

¹⁰ Personal communication with the Planning Manager.

¹¹ Personal communication with the Planning Manager.

that only the richer peasantry would benefit from the integration into state capitalist market and credit institutions. They would have also have appreciated that the majority of the peasantry would only be able to benefit from such integration if there was a complementary and concurrent restructuring of property relations. Therefore they would have appreciated the limitations of the strategy.

7.5 Institutional Reforms and SAP.

In 1991 the government of Zimbabwe adopted a structural adjustment programme (SAP).¹² Since SAP is concerned with the deregulation of market controls, it was bound to have an impact on the strategy of modernising peasant agriculture through the extension of marketing and credit institutions. This section discusses the deregulation of these institutions and the likely impact on the peasantry.

While Zimbabwe's highly regulated and controlled marketing and pricing system of the 1980s promoted productivity within peasant agriculture, albeit with contradictions, it did not permit market forces a significant role in the process of social change. Whatever its merits, by denying market forces a significant role in social transformation, the system violated one of the cardinal principles of SAP. It is therefore not surprising that the system has had to be reformed with the implementation of SAP.

In its economic reform policy document which introduced SAP, the government stated that in order to eliminate progressively price controls and subsidies to parastatals, it was undertaking a review of the working of the agricultural marketing agencies (Zimbabwe 1991a). It proposed giving the directors of agricultural marketing boards greater independence so that they would be responsible for making their operations more commercially oriented in order to gradually dispense with the need for subsidies. In addition, it proposed to decontrol the marketing and pricing of crops in order to create a role for private marketing channels.¹³ The World Bank (1991) observed that while extending the marketing system to peasants was

¹² See Chapter 8 for a discussion of the adoption of SAP.

¹³ See also the Second Five Year National Development Plan.

crucial to the success of increasing communal area production of maize and cotton, it contributed to the large parastatal deficits. It also argued that the dominance of the parastatal marketing system had severely hindered the development of informal markets. The Bank made recommendations which are similar to the policy objectives of the government which are discussed in the foregoing.

The above policy changes have necessitated changes in the laws relating to agricultural marketing and pricing. In 1991, the *Grain Marketing Amendment Act (No. 9 of 1991)* and the *Cotton Marketing and Control Act (No. 8 of 1991)* were enacted to give more powers and autonomy to the boards of the GMB and the CMB respectively. Prior to the amendment, the Agricultural Marketing Authority (AMA) constituted the boards of the two bodies. The amendments were consonant with the government's objective to give the boards of parastatals greater independence and the responsibility for making their operations more commercially oriented with a view to eliminating subsidies.

In July 1993 the government decontrolled the marketing and pricing of most agricultural products.¹⁴ In terms of the *Grain Marketing (Control)(Amendment) Order, 1993* (No.1) SI 330 of 1993 the marketing of crops through the GMB has been decontrolled except for maize. Even in the case of maize, producers are free to dispose of maize grown anywhere in Zimbabwe to any person other than a specified miller or a person acting on behalf of a specified miller. The GMB sets a producer price floor and a consumer price ceiling for maize. The pricing and marketing of cotton have also been decontrolled. With the deregulation of the controlled marketing system, informal markets are likely to re-emerge. In a study of Gokwe district in the Midlands Province, Breslin (1994) shows that the dominance of the parastatal marketing system destroyed informal markets which existed during the colonial period.

The deregulation of marketing control has created new problems for the AFC. Since it is no longer mandatory for farmers to market their crops through the GMB and the CMB, the AFC can no longer rely on the stop order system. The loans advanced by the AFC to peasants are small and the costs of litigation in the Magistrate's Court do not make it worthwhile to rely

¹⁴ See the Herald of 29 July 1993.

on the court for the recovery of such small debts. The AFC cannot rely on the newly introduced Small Claims Court because the court has no jurisdiction to entertain claims by corporations against individuals. It cannot rely on the Community Courts either since the cause of action does not arise out of customary law.¹⁵

What is the likely impact of the deregulation of marketing and price-setting institutions on the peasantry? The deregulation is obviously benefiting the rich peasantry who have stepped into the void left by parastatal organisations. Local storekeepers constitute the private marketing channels which are envisaged in government policy. Evidence is already emerging that storekeepers are exploiting the peasantry. MacGarry (1994:24) points out that in 1993 when the GMB was paying Z\$900/tonne for maize, in one communal area storekeepers were paying approximately Z\$620/tonne while in another one they were paying approximately Z\$360. In other words, deregulation has provided additional opportunities for accumulation. It is thus accelerating and accentuating social and spatial differentiation and does not address the reproduction needs of poor peasants.

Conclusion.

This chapter has argued that, in addition to the technocratic methods discussed in Chapters 5 and 6, the government adopted a strategy of modernising peasant agriculture by integrating it into the inherited state capitalist marketing, credit and input institutions. The strategy fitted into the 'growth with equity' policy of the government. It was also consonant with the programmes of some multilateral and bilateral aid organisations, some of which supported it for ideological reasons since it promoted market reforms. They also supported it because it gave them an opportunity to influence the policy making process.

The chapter has argued that while the strategy did increase peasant productivity and accumulation as anticipated by the government, it only benefited a small percentage of peasant producers and thus accelerated spatial, class and gender differentiation. This underscores the limitations of modernisation approaches which are based on ahistorical assumptions and fail to

¹⁵ Personal Communication with the Planning Manager.

take into account the nature of peasant relations of production. Without the transformation of colonial property and production relations, the strategy was bound to benefit the rich peasantry who had the means to engage in accumulation. Their accumulation, however, has continued to be constrained by their limited access to additional land in the communal areas.

The strategy of modernisation intensified gender differentiation. The integration of the peasantry into market and credit institutions was predicated on patriarchal household relations of production which had developed before and during the colonial era. Thus in those households which engaged in accumulation as a result of the integration, the benefits were controlled by men notwithstanding the fact that production was based on family labour. Again this underscores the fact that without a restructuring of property relations, the strategy was bound to be of limited benefit. The chapter has also argued that the strategy has been constrained by environmental factors. The next chapter examines agrarian reform after the amendment of the property clauses of the Lancaster House Constitution and the adoption of SAP.

CHAPTER 8.

AGRARIAN REFORM AND THE STRUCTURAL ADJUSTMENT PROGRAMME.

Introduction.

One of the major constraints on agrarian transformation during the first decade of Zimbabwe's independence was the constitutional provision which protected private property from compulsory acquisition. As part of the Declaration of Rights, section 16 was entrenched for ten years and could not be repealed or amended before 18 April, 1990 except by a unanimous vote by the legislature. It was duly amended in December 1990 and a new *Land Acquisition Act* was enacted in 1992. *Prima facie*, the new constitutional and legal regime have enhanced the capacity of the state to acquire land compulsorily and to engage in agrarian reform.

This chapter analyses land acquisition and redistribution under the post-Lancaster House constitutional and legal framework. The first section examines developments in the political economy in the period preceding and following the constitutional amendment and the enactment of the new land acquisition statute. In other words, it seeks to situate legal changes within a national and international political and economic context. It shows that national and international economic and political developments of the late 1980s culminated in the adoption of the SAP in 1991. It argues that the adoption of the SAP represented the triumph for the free market ideology which is only prepared to countenance market based agrarian reforms. In addition, it argues that the abandonment of socialist rhetoric following the adoption of the SAP has given a fillip to black bourgeois and petty bourgeois economic nationalism which advocates state assistance in facilitating accumulation in agriculture.

The second section analyses section 16 of the Constitution as amended and the new land acquisition statute. It discusses the various social struggles for and against the post-Lancaster House constitutional and statutory framework of compulsory land acquisition. It also analyses the extent to which the new constitutional and statutory framework enhances the power of the government to acquire land compulsorily for purposes of redistribution. It argues that both the constitutional amendment and the new land acquisition statute give the government enhanced powers for the compulsory acquisition of land.

The third section examines land acquisition and redistribution under the post-Lancaster House constitutional and legal framework. In other words, it examines the extent to which land acquisition and redistribution has developed and departed from the days when it was shaped and determined by the Lancaster House Constitution. It shows that the enhanced powers of compulsory acquisition of land have been used for the benefit of the black bourgeoisie and petty bourgeoisie. It argues that land acquisition and redistribution are shaped by class interests which emerged during the first decade of independence.

8.1 The Political Economy After Lancaster.

8.1.1 From Socialist Rhetoric to the SAP.

A fundamental development which has shaped agrarian reform in the 1990s was the government of Zimbabwe's formal adoption of the SAP in 1991. A number of developments both at the national and international levels contributed to the decision to adopt the SAP. The official version of national developments which culminated in the adoption of the SAP singles out the disappointing economic performance of the 1980s as the sole cause. The government identifies the major economic problems as the slow rate of growth of the GDP which lagged behind population growth; the disappointing growth of exports which continued to be dominated by primary commodities such as sugar, tobacco, cotton, gold, asbestos and nickel; the phenomenal rise in the debt service ratio which rose to 34% by 1987; the negative growth of imports; the growing unemployment; and the recurrent budget and balance of payment disequilibria (Zimbabwe 1991a, 1991b). The government argues that in the circumstances, it was forced to introduce an Economic Reform Programme in order to create conditions for market-led economic development as well as stimulate productive investment, employment and exports (Zimbabwe 1991b).

While the above economic problems did occur, the adoption of the SAP should, however, be situated within developments in the global political economy. Since the global recession of the 1970s and the debt crisis which threatened the stability of international financial markets, the Bretton Woods multilateral financial institutions have adopted SAPs as a means of restructuring both production processes and markets in the developing countries.

The restructuring process involves the rolling back of the state and, consequently, the liberalisation and deregulation of the economy. SAPs were given a fillip by the collapse of state socialism in Eastern Europe which changed the balance of forces in the global political economy and discredited socialism as an alternative to capitalism. Triumphant proponents of capitalism held it out as the only viable option for the developing countries. These developments strengthened the already strong hand of the Bretton Woods institutions in their dealings with the developing countries.

SAPs are generally forced upon countries which face balance of payment problems. Creditors, whether official or commercial, insist that a country should seek the advice of the International Monetary Fund (IMF) as a pre-condition to the rescheduling of its debts. The IMF usually insists on the adoption of a SAP before a country can receive a clean rating which will persuade creditors to reschedule its debts. As indicated in Chapter 4, Zimbabwe's initially flirtations with the IMF in 1983-84 were short-lived. During the 1980s Zimbabwe never sought to reschedule her debts, even when the debt service ratio exceeded 30%, presumably because the government wanted to avoid a situation where the SAP would be imposed upon it.¹

In the late 1980s the government of Zimbabwe discovered that the faithful servicing of debts did not sufficiently protect it from the vicissitudes of global economic recession and the tentacles of the Bretton Woods institutions. The official version of developments which precipitated the adoption of the SAP have already been discussed. There is, however, another version which suggests that the World Bank was not happy with Zimbabwe's successful go-it alone policies of the 1980s which generated growth rates which were higher than those of countries which had adopted the SAP (Stoneman 1992). As a result, the World Bank vetoed a loan for export promotion that had been negotiated after the run-away success of an earlier one. Thereafter other donors tightened the screws until Zimbabwe showed a willingness to

¹ In 1983 the government adopted stabilisation measures which were akin to those imposed by the IMF. The government argued that the measures were home-grown. It would appear that while the government had no problems with IMF type stabilisation measures, it preferred to retain the import-substitution regulatory framework which it inherited from the Rhodesians.

adopt the SAP. Whatever the circumstances, the Zimbabwean government formally introduced a supposedly 'home-grown' SAP in 1990. The programme had the blessing of the World Bank which promised to support it without significant conditionality (Stoneman 1992).

The adoption of the SAP has had a significant impact on the Zimbabwean political economy. As Chapter 4 shows, one significant development of the 1980s was the extension of state participation in the economy in the name of socialist transformation. Because of socialist rhetoric, black private accumulation was frowned upon and state capitalism was promoted as an alternative.² The rolling back of the state from the economy and the promotion of the market ideology under the SAP has undermined state capitalism and has given legitimacy to black accumulation (Raftopolous 1992). Ostensibly frowned upon in the days of socialist rhetoric, such accumulation has received official blessing under the new dispensation. The adoption of the SAP was, however, not without opposition from within ZANU(PF). Members of Parliament repeatedly criticised the SAP on the grounds that it had been adopted without prior consultation (Moyo 1992). Notwithstanding the criticism, socialist rhetoric was abandoned without much ceremony and was given short shrift and replaced with the discourse of 'market-led growth and market forces'. On the other hand, the SAP has boosted the confidence and strengthened the hand of the white bourgeoisie.

The SAP has thus given vent to black bourgeois and petty bourgeois economic nationalism. While the black bourgeoisie and petty bourgeoisie managed to accumulate during the 1980s, they have continued to be marginalised as the commanding heights of the economy remain in the hands of the white bourgeoisie, international capital and the state. Since the SAP has lent legitimacy to black accumulation, the new economic nationalism advocates the use of the state to facilitate black bourgeois and petty bourgeois accumulation. According to Mugabe

it is better to have capitalism which is based here, rooted here, domesticated, than capitalism which is foreign. We try to get our own people, either as co-operatives or as partners or as public companies to participate in the economy in a meaningful way and get in control of the means of production. In my view, if we succeed here, we would then be faced with our own companies which are

² Notwithstanding the socialist rhetoric, blacks in leadership positions within the state did acquire property. The leadership code which ZANU-PF adopted at its 1984 Congress was never respected by those it was addressed to.

capitalist and it will be up to us to say in this area the State should have so much equity (quoted in Moyo 1992:325).

Thus the 1990s have been characterised by market-oriented reforms which have been introduced in accordance with the SAP on the one hand, and statist policies designed to promote black accumulation in response to black economic nationalism on the other.

8.1.2 The Politics of Land Reform.

After its de-politicisation for most of the 1980s, the land question resurfaced as a political issue in 1989 (Herbst 1990, Palmer 1990, Moyo and Skalnes 1990, Sachikonye 1991). Its resurfacing probably had more to do with the impending general elections in 1990 than with concern for the landless. With the formation of a new political party, the Zimbabwe Unity Movement (ZUM), in 1989, ZANU(PF) could no longer take the support of the masses for granted. The official politicisation of the land question also had to do with the impending expiry of the ten year period during which the Declaration of Rights could only be amended with a unanimous legislative vote. During the first decade of independence the entrenched provisions of the Constitution had provided a timely alibi for not undertaking agrarian reform.

What kicked-off the official politicisation of land was a suggestion by the former leader of ZAPU and then Senior Minister, Joshua Nkomo, that the government should persuade the agrarian bourgeoisie to sell their unused land. This was followed up by President Mugabe's Heroes Day address to the nation in which he promised a new 'revolutionary land reform programme, to redistribute land without inhibitions' (quoted in Moyo and Skalnes 1990:4). Subsequently, he said compensation would be paid and called for a survey to be made of all unutilised and under-utilised land (Moyo and Skalnes 1990, Herbst 1990).

Mugabe's utterances on the land question evoked a warning from the British High Commissioner to Zimbabwe not to seize land from the white agrarian bourgeoisie when the Lancaster House Constitution expired (Palmer 1990). To put the issue beyond peradventure, the British Minister for Overseas Development, Lynda Chalker, announced further British support for the resettlement programme in February 1990, apparently after an undertaking by the Zimbabwean government that the willing seller-willing buyer provision would not be

repealed when the provision that entrenched the Declaration of Rights expired in 1990 (Palmer 1990).

At the level of policy, the government announced a national land policy (NLP) in 1990 which proposed, among other things:

(a) the acquisition of 5 million hectares in large blocks for the resettlement of 110 000 households; (b) a review of the settler selection criteria and land-use models with a view to placing emphasis on economic rather than social or subsistence criteria; (c) a review of land tenure in the Communal, Resettlement, and Small Scale Commercial Farming areas; (d) the promotion of black capitalist agriculture through the provision of training and agricultural support services; (e) the introduction of a land tax; (f) the increased supervision and regulation of land-use; (g) the limitation of individual and company ownership to one farm unit, and the restriction of absentee and foreign ownership of land; (h) the stipulation of minimum and maximum farm sizes based on individual farm plans and recommended patterns; (i) the deregulation of sub-divisions (Mangwende 1990).

The NLP did not at all address the fundamental issue at the heart of the agrarian question- the transformation of property relations. The recommendations were only intended to rationalise rather than transform the agrarian structure. The NLP represents a strange method of policy making. It was formulated by government officials without any public consultation. As a result, public consultation which should have preceded its formulation is recommended for some of the issues covered such as land tenure. In fact it is a misnomer to call it a national land policy.

The significance of the NLP lies both in the manner in which it was formulated and in its recommendations. Its formulation was bureaucratic rather than popular and participatory. The policy making process was bureaucratic because the NLP was hardly intended for the benefit of the landless and the poor peasants. While the NLP still talked about the resettlement of 110 000 peasant households, it is clear that the emphasis had shifted to the petty bourgeois farmers who had benefited from the democratisation of social relations in the 1980s. Hence the recommendation on changing the settler selection criteria. Furthermore, the NLP was intended to facilitate capitalist accumulation in agriculture for the emergent black bourgeoisie. In very concrete terms, the NLP reflected the mediation of class interests through the state. The amendment of the Constitution and the enactment of the new land acquisition statute should be understood in the context of the above developments.

Notwithstanding the absence of public consultation in the policy making process, land remained an important national issue. Moyo's (1992a:101) survey of the 1990 elections showed that the electorate considered land to be one of the most important national issues. Land, including land redistribution, land allocation and resettlement emerged as the second most important national issue after unemployment.

8.2 The Constitutional and Legal Framework.

8.2.1 The Constitutional Amendment.

The constraints on compulsory acquisition of land which were imposed by section 16 of the Lancaster House Constitution have already been discussed in Chapter 3. In December 1990, the Parliament of Zimbabwe enacted the *Constitution of Zimbabwe Amendment (No. 11) Act No. 30 of 1990*. The objectives of the amendment were to relax and extend the conditions upon which land could be compulsorily acquired. Compulsory acquisition of land still has to be authorised by law and should be reasonably necessary for the utilisation of the land for settlement for agricultural or other purposes; or for land reorganisation, forestry, environmental conservation or the utilisation of wild life or other natural resources; or for the relocation of persons dispossessed in consequence of the utilisation of land for the above purposes (section 16 (1) (a) (i)). Prior to the amendment, only under-utilised land could be compulsorily acquired for settlement for agricultural purposes. As amended, the Constitution permits compulsory acquisition of any land, including that which is efficiently utilised.

Another amendment was the repeal and replacement of the 'prompt and adequate' compensation requirement with the requirement that the acquiring authority should pay 'fair compensation for the acquisition before or within a reasonable time after acquiring the property, interest or right' (section 16 (1) (c)). The law authorising compulsory acquisition is required to:

- (a) specify the principles on which, and the manner in which, compensation for the acquisition of the land or interest or right therein is to be determined and paid;
- (b) fix in accordance with the principles referred to in (a) above, the amount payable for the acquisition of the land or interest or right therein; and

(c) fix the period within which compensation shall be paid for the acquisition (section 16 (2) (a), (b) and (c)).

In addition, the law which lays down the principles upon which compensation is payable cannot be questioned by any court on the grounds that the compensation provided is not fair (section 16(2)(b)). In the event of a contested acquisition, the law authorising compulsory acquisition should require the acquiring authority to apply to the High Court or some other court for an order confirming the acquisition (section 16 (d)). Where the court refuses to confirm the compulsory acquisition, the remedy available to the owner is the prompt return of the land³ Finally, the constitutional provision which required compensation to be paid in foreign currency and to be remitted out of Zimbabwe was repealed. The acquiring authority is required to give reasonable notice of the intention to acquire the property to interested parties (section 16 (1) (b)).

The provisions of the Constitution of Zimbabwe Amendment (No. 11) Act, (No. 30 of 1990) regarding compulsory land acquisition have been subjected to criticism by the agrarian bourgeoisie, their allies and the judiciary. At the centre of the criticism is the provision that the law which lays down the principles upon which compensation is payable cannot be called into question by any court on the grounds that the compensation provided by law is not fair. There have been two lines of attack. The first one questions the constitutionality of the amendment on the grounds that it violates the rule of law. At the time of the amendment, the major proponents of the argument were the current Chief Justice and his predecessor.⁴ The Chief Justice went so far as to question the authority of the legislature to amend the Constitution. He argued that

it must not ... be assumed ... that an affirmative vote of one hundred members will enable Parliament to pass a constitutional Bill which goes to the extent of damaging or destroying the very foundation or structure of the Constitution (Gubbay 1991:7-8).⁵

³ See Constitution of Zimbabwe Amendment (No.12) Act (No. 4 Of 1993).

⁴ For a collection of the various criticisms against the amendment, see the Legal Forum, Vol.3 N. 1, 1991. The former Chief Justice, E. Dumbutshena argued that the provision flies in the face of all accepted norms of modern society and the Rule of Law.

⁵ The Chief Justice's argument is that the Constitution stands on certain fundamental principles which are its structural pillars, and that if these pillars are demolished or damaged, the constitutional edifice will fall. In his opinion, there is an implied limitation which precludes Parliament from abrogating or changing the identity of the

The Chief Justice purported to base his argument on the doctrine that the Constitution stands on certain fundamental principles which are its structural pillars. The doctrine was developed by the Indian Supreme Court. The fundamental principles argument which he purported to rely upon assumes that the Constitution was made by a Constituent Assembly which is superior to Parliament. The validity of the Chief Justice's argument is questionable given that the Constitution was not made by an elected Constituent Assembly which is superior to Parliament. His argument is thus based on a false premise. The other line of argument was that the amendment would scare off foreign investment.⁶

The controversy reflects conflicting notions of how the power of the state should be exercised. Given the importance of land redistribution, the legislature took the view that the principles upon which compensation is based should be fixed by a law which should not be questioned by the judiciary, while the judiciary and some social groups believe that the judiciary has a constitutional right to be the final arbiter on matters involving conflict between the state and its citizens. At the heart of the conflicting notions is the concept of constitutionalism which requires the proscription of the exercise of state power by the constitution. The Constitution of Zimbabwe provides that it is the supreme law of Zimbabwe and that if any other law is inconsistent with it, that other law shall be void to the extent of the inconsistency (section 3). Generally, the provision limits the sovereignty of Parliament to the extent that if Parliament enacts any law which is inconsistent with the Constitution, that law will be void to the extent of the inconsistency.

The attempt to oust the jurisdiction of the courts to determine the fairness or otherwise of compensation for land compulsorily acquired created an inconsistency within the Constitution. While this was not raised at the time of the amendment, it was raised during

Constitution or any of its basic features. Any law which has the effect of changing the identity of the Constitution would be struck down as unconstitutional by the judiciary. In response the President argued that judges should not interfere with Parliament's political decisions and that those judges who were unhappy with laws passed by Parliament should resign (The Herald, 18 January, 1991). The Attorney-General argued that the Chief Justice's comments went further than was warranted by the occasion, and that he had delivered judgment over an issue of high significance which was not properly put before him.

⁶ See the Editorial in the Legal Forum (1991), Dumbutshena (1990) and the Catholic Commission for Justice and Peace (1991).

legislative debates on the *Land Acquisition Bill of 1992*.⁷ Section 16(2) of the Constitution appears to be inconsistent with section 18(9) which provides that:

Every person is entitled to be afforded a fair hearing within a reasonable time by an independent and impartial court or other adjudicating authority established by law in the determination of the existence or extent of his civil rights or obligations.

In the absence of an unequivocal provision that the right to fair compensation for land that is acquired compulsorily is excluded from the application of section 18(9), any law authorising compulsory acquisition of land which purported to oust the jurisdiction of the courts would have been inconsistent with section 18(9) and therefore unconstitutional. Section 52 of the Constitution provides that 'no law shall be deemed to amend, add to or repeal any provision of this Constitution unless it does so in express terms'. Section 16(2) as amended would only have been effective if it had expressly stated that the right to fair compensation was not covered by section 18(9). As argued below, the *Land Acquisition Act (No 3 of 1992)* appears to have cured the constitutional defect.

8.2.2 Background to the Land Acquisition Act of 1992.

The Act was enacted to give effect to the Constitution as amended and to translate the national land policy into law. A number of significant developments which impinge on agrarian reform occurred in the period between the amendment of the Constitution and the enactment of the Act. First, the government formally adopted a SAP. The SAP is significant for agrarian reform because of the emphasis it places on market reforms and export-dependent accumulation strategies. The emphasis on market-dependent rather than state-led reforms was bound to influence debates and struggles for and against agrarian reform, while the emphasis on export-led accumulation strategies was bound to enhance the position of the agrarian bourgeoisie which produces most of Zimbabwe's agricultural exports. Furthermore, the

⁷ See the adverse report from the Parliamentary Legal Committee on the Land Acquisition Bill, Zimbabwe Parliamentary Debates, Vol. 18, No. 61, col. 4400 - 4404.

adoption of the SAP gave the Bretton Woods institutions leverage in the policy making process.

The intervening period between the amendment of the Constitution and the enactment of the Act also gave the agrarian bourgeoisie an opportunity to regroup and oppose the state's land policies. In the context of the SAP, the CFU was quick to link the interests of the agrarian bourgeoisie with the SAP (CFU 1991). In its proposals on how the *Land Acquisition Act* of 1985 should be amended, the CFU argued that the economic consequences of the government's land policy, as expressed in the constitutional amendment, were undermining the confidence of the agricultural sector whose performance was critical to the success of the SAP. It pointed out that the success of the SAP depended on maximising productivity, exports and foreign exchange earnings, while encouraging investment, development and employment creation.

Another important development was the publication of a World Bank Agriculture Sector Memorandum (World Bank 1991) which, *inter alia*, dealt with the land question. The World Bank (the Bank) recommends the acquisition of 3,5 million hectares of under-utilised land which it argues is the maximum that may be acquired without hindering the productive capacity of the large farm sector. Given the Bank's faith in market forces, it is hardly surprising that it recommended market-based forms of land acquisition. The Bank recommended the imposition of a land tax which would act as a stimulant to a land market. In addition, it recommended that the tax should be coupled with a relaxation of regulations on the right to sub-divide land.⁸

8.2.3 The Land Acquisition Act of 1992.

The Land Acquisition Act was enacted in the context of the above developments. It reproduces the constitutional grounds upon which land may be compulsorily acquired. The Act has retained many provisions of the *Land Acquisition Act of 1985* such as the procedure

⁸ A researcher associated with the Bank has questioned the effectiveness of a land tax as land reform measure (Skinner 1991). While the Commission of Inquiry into Taxation saw a land tax as an essential measure to raise revenue and to mitigate the inequalities in the distribution of land, it did not see it as land reform measure (Zimbabwe 1986b).

for compulsory acquisition, the assessment of compensation for non-designated land which is compulsory acquired and the provisions relating to the acquisition of derelict land.⁹ The government's right of first refusal has, however, been repealed.¹⁰ This section focuses on Part IV of the Act which deals with Designation of Rural Land for Resettlement and Other Purposes and Part V which deals with Claims for and Assessment and Payment of Compensation.

An innovation which the Act introduced is the concept of designation. Under the Act land that may be compulsorily acquired is divided into non-designated land and designated land. The procedure for the compulsory acquisition of non-designated land is the same as the procedure which was established by the *Land Acquisition Act* of 1985 and will not be discussed in this chapter. During debates on the *Land Acquisition Bill* the Minister of Lands argued that designation would facilitate the acquisition of land in large blocks suitable for the implementation of the resettlement programme. He also suggested that designation would facilitate planning for both the government and the farmers since the land that the government intended to acquire would be clearly identified and demarcated such that prospective farmers would know where to invest.¹¹ In addition he identified the categories of land that would be targeted for designation and these include under-utilised land or land not highly utilised, land under absentee ownership, foreign owned land, derelict land, land owned for speculative purposes, and land which belonged to people with more farms than are considered necessary for maximum productivity

Part IV of the Act authorises the Minister to designate rural land as land that will be acquired for resettlement or other public purposes. Among other things, the Minister has to specify the purpose for which land is being acquired and the period, not exceeding ten years, within which it will be acquired. She is also required to publish a notice giving particulars of the land to be acquired, and is required to notify the owner that the land has been designated

⁹ See Chapter 4 for an analysis of the *Land Acquisition Act* of 1985.

¹⁰ Reference should be made to the *Land Acquisition Act* of 1985 which is analysed in Chapter 5.

¹¹ See *Zimbabwe Parliamentary Debates* Vol. 18, No. 61, cols. 4432, 4433.

(section 12). Persons with interest in the designated rural land may make representations to the Minister objecting to the designation. The Minister may amend or revoke the notice designating the rural land concerned and her decision in the matter is final (section 13). Designated rural land may only be sold, leased or disposed of in accordance with the written permission of the Minister (section 14). If the Minister refuses to grant permission, the owner can call upon her to acquire the land. The acquiring authority is required to acquire the land within the time specified in the notice of designation. Designation of land does not affect the occupation and use rights of interested parties pending the issue of a preliminary notice in respect of the land (section 15).

Part V of the Act deals with claims for the assessment and payment of compensation for land which is compulsorily acquired. There are separate provisions dealing with compensation for land which has not been designated and land which has been designated. The Act makes provision for the payment of fair compensation for designated rural land that has been compulsorily acquired, and fair compensation within a reasonable time for land which is not designated rural land (section 16).

The assessment of compensation for land which is not designated rural land is set out in section 20 and reproduces the provisions of the *Land Acquisition Act of 1985* and will not be discussed here.¹² With respect to compensation for designated rural land, the Act provides for the appointment of a Compensation Committee to be made up of three designated government officials and not more than three other members appointed by the Minister. Its functions are to determine the compensation payable in respect of the acquisition of designated rural land (section 17). A valuation officer is required to prepare a preliminary estimate of the compensation payable for the land which she should transmit to the Compensation Committee. The Compensation Committee is required to prepare its own estimate of the compensation payable, to give written notification of its estimate to every interested person, and to invite every person who is entitled to compensation and who disagrees with the Committee's estimates to make representations on the issue (section 18).

¹² See Chapter 4.

In the assessment of compensation, the Committee and the evaluation officer are bound by the principles prescribed in the First Schedule which are applicable to the particular acquisition (section 19(1)). The Schedule sets out 15 principles. These include, among others, the size of the land, the type of soil found on it and the extent of cultivation carried out on it, the varieties of crops that are being grown on it and the yield obtainable, the use of the non-arable land, and the nature and conditions of the buildings and improvements on it. The Act authorises the Minister to give the Committee guide-lines for the fixing of compensation payable in respect of all classes or types of designated rural land. Such guide-lines may relate to the amounts of compensation payable or the principles to be applied in assessing the compensation. However, they should not be inconsistent with the principles prescribed in the First Schedule (section 19).

The Minister may also fix the form and manner in which, and the period within which compensation should be paid for designated rural land. However, unless the person to whom compensation is payable agrees otherwise, at least one-half of the compensation should be paid at the time of acquisition or within a reasonable time thereafter. Of the remainder, at least one-half should be paid within two years after the acquisition, and the balance within five years after the acquisition. The Minister may direct payment to be made by way of a lump sum; or in cash or in bonds or other securities issued by the government (section 19). The staggering of payments is a big improvement on the 'prompt' payment requirement enshrined in the Lancaster House Constitution. At the time of the enactment of the Act the CFU expressed concern about payment in government bonds. Their fear was that government paper would depreciate in value over time. With the adoption of THE SAP, government paper has appreciated in value and the CFU's fears have disappeared.¹³

The Act does not define the meaning of fair compensation. Coldham (1993) correctly argues that the principles set out in the First Schedule which are supposed to guide the Compensation Committee are little more than statements of common sense and throw no light on the issue of fair compensation. During the debates on the Bill the Minister argued that the

¹³ Personal communication with the Director of the CFU.

government had to control the prices of land in order to avoid buying land at exorbitant and speculative prices.¹⁴ So far no dispute has arisen concerning the fairness of compensation paid for designated land.

The assessment of compensation for designated rural land is subject to review by the Administrative Court at the instance of either the acquiring authority or the person claiming compensation. The grounds for requesting a review should be the failure of the Committee to observe the prescribed principles set out in the Act (section 23(1)). The Administrative Court can only set aside the decision on the grounds that the Committee did not observe any of the principles set out in the First Schedule to the Act. In a review of an assessment, the Administrative Court has the same powers as the High Court on a review of a decision of a tribunal (section 23(4)). An appeal from a decision of the Administrative Court lies with the Supreme Court which can only set aside the assessment of the Committee on the grounds that it did not follow the prescribed principles.

As argued above, the constitutionality of the attempt to oust the jurisdiction of the courts was raised during the debates on the *Land Acquisition Bill*. The Act appears to have cured the constitutional defect. As matters stand, the legislature has power to determine the principles upon which compensation will be paid. In other words, the provision amounts to a legislative control of land prices. The executive arm of government determines the amount of compensation to be paid in every case on the basis of the principles laid down by the legislature. In the event of a dispute as to whether the compensation is fair, an independent tribunal has jurisdiction to determine whether the compensation is in accordance with the principles laid down by the legislature. The constitutional amendment appears to satisfy the requirements of legality.

The Act amended the *Rural Land Act, (Chapter 155)* by inserting a subsection to section 15 of that Act which authorises the Minister to make regulations providing for limitations on the number of pieces of land that any person may own for farming or other purposes, limitations on the size of any piece of land that may be owned by any person for

¹⁴ Zimbabwe Parliamentary Debates, Vol.18, No.61, col, 4440-1.

farming or other purpose, prohibitions or restrictions on the rights of no-residents to own, lease or occupy land in Zimbabwe. The Minister is yet to make regulations imposing the contemplated limitations. As regards the limitations on the number of pieces of land that a person may own, the regulations, if and when they are made, will have to address the fact that 61% of the land owned by the agrarian bourgeoisie is held by companies (Zimbabwe 1989:16). There is a danger that individuals may hide behind the corporate veil so as to avoid the provisions of the Act. Provision will, therefore, have to be made in the regulations for piercing the corporate veil in order to ascertain the number of farms individuals own.

Overall, the constitutional amendment and the Act attempt to balance the interests of landowners and the need to redistribute land. Thus, while the Constitution and the Act enhance the government's powers to acquire land compulsorily, they also protect and respect the rights of landowners. Hence the detailed procedures for compulsory acquisition and access to the courts in the event of a dispute. The Act is therefore not oppressive. Contrary to the claims of the agrarian bourgeoisie, it is not unconstitutional. In fact, an analysis which is sympathetic to their view has concluded that the Act satisfies international human rights norms (Naldi 1993).

8.3 The Implementation of the Land Acquisition Act.

This section examines the implementation of the Act. As argued in the foregoing, the Act gave the state enhanced powers for the compulsory acquisition of land. However, the implementation of the Act has been ambiguous. There seems to be concern about its implications for foreign investment. The British and United States governments have expressed concern about what they perceive to be lack of due process in the acquisition procedure (Murphy 1994). In 1993 a trip by a government delegation to Canada to promote trade was cancelled allegedly due to the confusion created in that country by the Land Acquisition Act (Goncalves 1993). In December 1993, the United States' representatives at the Paris Donor Conference expressed her government's concern about the land acquisition programme.¹⁵ The Chief Executive of one of the largest multinationals operating in Zimbabwe,

¹⁵ See the Daily Gazette of 15 December 1993.

Lonrho, argued that the most harmful aspect of the Act was the uncertainty it placed on domestic and foreign investment (Goncalves 1993). Mugabe's initial response was that if donors and foreign investors were opposed to the land policy, they could keep their money.¹⁶ Later on at an investment promotion conference in London, he assured British businessmen that 'where land is used for agro or industrial purposes, we will not temper with it'.¹⁷ As argued below, the implementation of the Act has also been affected by the contradictory priorities of the government.

The efficacy of the procedure of designation, which is the linchpin of the Act in so far as land reform is concerned, is yet to be demonstrated. Quite a large number of designations which were made have been revoked. For example 8 of the 13 farms which were designated on the 10th of July, 1992, for the resettlement of persons displaced as a result of the construction of the Osborne Dam in Manicaland were revoked. According to officials in the Ministry of Lands the designations were revoked because two of the farms supplied the city of Mutare with milk, while the others belonged to black farmers.¹⁸ One farm was designated on the 23rd of October, 1992 and the designation was subsequently revoked. On the 30th of April, 1993, 70 farms were designated and 33 of the designations have since been revoked. All together, 98 farms were designated by the end of 1993 and 39 designations have been revoked on the basis of representations made to the Minister.¹⁹ Thus of the farms which had been designated by the end of 1993, about two fifths were revoked.

Officials in the Ministry argued that the reason for the revocations of the designations is that most of the designated farms belong to indigenous (black) farmers.²⁰ From the names which appear in *General Notice 246* of 1993, the notice of designation of the 70 farms, 11 appear to have belonged to black farmers. By 1992 when the government designated about 20

¹⁶ The Herald of 17 July 1993.

¹⁷ The Daily Gazette of 20 May 1994.

¹⁸ Personal communication.

¹⁹ Answer by the Minister of Lands, Agriculture and Water Development to a question by Mr V. Moyo during a question for oral answer session, Parliament of Zimbabwe, 27th of October, 1993.

²⁰ Personal communication.

black farms for compulsory acquisition, many blacks complained on the grounds that they had not been given sufficient time to develop and fully utilise their farms (Moyo 1994). It is in accordance with the policy of promoting emergent black capitalist farmers that the designation of farms belonging to blacks has been revoked.

In order to understand why farms belonging to black farmers were designated in the first place, it is important to appreciate the method of identifying land for designation which was adopted by the Ministry of Lands, Agriculture and Water Development after the Act was enacted. The Ministry modified the suggestions of the CFU regarding provincial committees which would be tasked with identifying land for compulsory acquisition (CFU 1991). As constituted by the Ministry, the Provincial Land Identification Committees comprised the Provincial Agritex Officer who chaired the committee, representatives of the CFU, the ZFU, the District Council, and officials from the Ministry of Local Government, Rural and Urban Development. The Committee was tasked with identifying derelict and under-utilised land and land owned by absentee owners. These are the committees which identified some of the farms owned by black farmers for compulsory acquisition, presumably because they were under-utilised or derelict. Officials in the Ministry of Lands, Agriculture and Water Development argued that Agritex officials had allowed members of the CFU to control the land identification process with the result that farms belonging to blacks were identified and designated.²¹ Hence the revocations. The Ministry has designated farms which have not been identified by provincial committees. Consequently, the CFU has accused the government of reneging on agreed rules for designation.²²

In the spirit of the NLP, the government has adopted a number of programmes intended to promote a black agrarian bourgeoisie. A clandestine policy initiative to promote about 500 black capitalist farmers over a period of 10 years on farm sizes ranging between 150 hectares and 1 500 hectares was discussed in 1993 but never received cabinet approval (Moyo

²¹ Personal communication.

²² See the Herald of 5 August 1993.

1994).²³ Another method of promoting black capitalist farmers that has been implemented is the so-called 'Tenant Farmer' scheme. Initially, this involved the leasing of state farms to blacks as and when the lease agreements of white farmers who leased land in terms of the *Agricultural Land Settlement Act* expired. In May 1993 the lease agreements of about 700 white leasehold farmers were cancelled and the 'Tenant Farmer' scheme was launched in a clandestine manner and the farms were offered to blacks (Moyo 1994). Included in the scheme were farms which had been acquired for resettlement. When the matter became public, there was a public outcry and the leases were cancelled on the orders of the President who claimed that he had not been aware of the scheme. Most of the beneficiaries were government officials and politicians. It has emerged that the agreements which have been cancelled relate to those farms which had originally been acquired for resettlement. The 'Tenant Farmer' scheme continues to be implemented, the only difference being the transparency which was occasioned by the public outcry.

The above attempts to use the state hot-house fashion to facilitate black bourgeois and petty bourgeois accumulation is opposed by the white agrarian bourgeoisie. While the white agrarian bourgeoisie and the black ruling class are agreed that land should be redistributed to those who have a capacity to accumulate, the white agrarian bourgeoisie have argued that clandestine attempts to redistribute land to the ruling class amount to an abuse of the state power. Ironically, the colonial state played a similar role in promoting the white agrarian bourgeoisie.

The constitutionality of the procedure of designation has recently been challenged in the High Court by a number of farmers whose land has been designated. In the case of *Alistair Davies and Others v The Minister of Lands, Agriculture and Water Development*²⁴ the applicants contended that Part IV of the *Land Acquisition Act* was *ultra vires* the Constitution

²³ In a personal communication, officials informed me that the Ministry of Lands had adopted a policy which required that before farms owned by blacks were auctioned to satisfy debts, clearance had to be sought from the Ministry. They also indicated that the Ministry was in the process of putting together a rescue package for black farmers who are in distress.

²⁴ High Court Harare 185/95.

on the grounds that it provides for the acquisition of property without providing for compensation contrary to sections 11 and 16 of the Constitution. The respondent argued that the state as a sovereign has what is known in American jurisprudence as powers of 'eminent domain' and police 'powers'. She argued that whenever the state exercises the powers of eminent domain and expropriates property, compensation is payable, whereas no compensation is payable in the exercise of police powers or control powers unless provided by law. The Court held that under Roman-Dutch law,²⁵ sovereignty confers on the state eminent domain over private property owned by people under its jurisdiction. In Zimbabwe the exercise of eminent domain is subject to the provisions of the Constitution which oblige the state to pay compensation for property which is compulsorily acquired. Furthermore, the Court held that the state has inherent jurisdiction to control the use of private property of persons under its jurisdiction and that this lesser power, like the power of eminent domain, derives from sovereignty. The power to control was also held to be subject to the Constitution. In addition, the Court held that the exercise of control powers in terms of Part IV of the *Land Acquisition Act* does not call for compulsory acquisition. In the circumstances, the Court held that Part IV is *intra vires* the Constitution. The plaintiffs have appealed to the Supreme Court and the appeal is pending.

While some of the aspects of designation, such as the requirement that designated land must be acquired within a period of ten years from the date of designation, are unreasonable²⁶, designation per se does not amount to compulsory acquisition of property without compensation. Designation is a preliminary step and if land is compulsorily acquired, the procedure set out in the Constitution and Part III of the Act has to be followed.²⁷ The issue that the case raises is whether the procedure of designation diminishes the rights of land

²⁵ For a discussion of the Roman-Dutch position on the power of eminent domain and expropriation, see Hlatshwayo (1990-1991).

²⁶ The ten year requirement is unreasonable because it does not make sense to designate land when the state is not yet ready to acquire it.

²⁷ In this respect, Hlatshwayo (1993a, 1993b) misses the point when he argues that the judicial method of acquisition applies to non-designated land, while the administrative method applies to designated land. Section 15 provides that where the Minister has designated rural land in terms of section 12, the acquiring authority concerned shall acquire the land in terms of this Act. In terms of the Act the only procedure for acquisition is set out in Part III and it applies to land regardless of whether or not it is designated.

owners to such an extent that it amounts to compulsory acquisition. In the United States the courts apply the 'diminution test' in deciding whether the government regulation in question amounts to compulsory acquisition. Courts are likely to declare that compulsory acquisition has occurred when a land owner is deprived of a reasonable economic use of her property because of regulation (Beatley 1994:201-3). If the test applied by American courts is applied to the procedure of designation, it cannot be argued that the land owners are deprived of reasonable economic use of their property.

There has also been a change in the settler selection criteria for the resettlement programme. One of the complaints against the initial settler selection criteria was that it gave land to people who were least able to utilise it. The World Bank (1991) argues that the dual objectives of attempting to address welfare goals in agriculture as well as seeking a replacement for the large scale capitalist sector are incompatible. It suggests that, because of the need to increase agricultural production, employment, and exports, the resettlement programme should place emphasis on increasing production in the resettlement areas. Furthermore, it proposes that the settler selection criteria be changed.

The Joint Presidents' Agricultural Committee, an umbrella body representing the CFU, the Zimbabwe National Farmers Union (ZNFU) and the National Farmers Association of Zimbabwe (NFAZ) argued that only those persons who can prove competency as farmers, either by certificate or experience, should qualify for resettlement (1990). Until August 1991 the former purchase area farmers were represented by the ZNFU, while communal area farmers were represented by the NFAZ. In August 1991 the two organisations merged and formed the Zimbabwe Farmers Union (ZFU) under the leadership of the former President of the ZNFU. In essence the merger represented the consolidation of the inchoate class interests of the emergent black agrarian bourgeoisie and petty bourgeoisie in the small scale commercial areas and the communal areas. These were the beneficiaries of the limited democratisation of the inherited colonial relations of production and the modernisation policies of the 1980s. Both the CFU and the ZFU continue to advocate the resettlement of those farmers who have shown

a capacity to accumulate.²⁸ While ostensibly representing the interest of communal area and petty bourgeois farmers, in actual fact the ZFU has come to represent the interest of black bourgeois and petty bourgeois farmers. Hence its support for a policy that would resettle those with a demonstrated capacity to accumulate.

By the end of the first decade of independence, the government for its part felt that land redistribution by way of the resettlement programme had created sufficient political stability to warrant a shift in emphasis away from the landless towards those who had demonstrated a capacity to accumulate. During the debates on the *Land Acquisition Bill*, the Minister of Lands argued that the first phase of the resettlement programme 'was a political programme that allowed the Government some breathing space and indeed it achieved peace and tranquillity'. He added that the second phase would be a productive one.²⁹ As noted in the foregoing, the NLP advocated the resettlement of farmers who had a proven record of accumulation. Accordingly, the government has adopted a new resettlement policy which is modelled on the Malaysian one. Pursuant to the new resettlement policy, the government has introduced a settler selection points scoring system with a maximum possible score of 50 points.³⁰ According to the Chief Resettlement Officer in the Department of Rural Development (DERUDE), the aim is to select a farmer with a potential to produce.³¹ On paper the selection system attempts to balance what DERUDE calls suitability factors on one hand, and need factors on the other.

The suitability factors which are taken into account are the age of the applicant, the number of livestock owned, skills, level of education and the health of the applicant. The need factors are the size of the family and the size of land owned by the applicant. Each factor is awarded points. Notwithstanding the attempt to balance suitability factors with need factors,

²⁸ From personal communications with the Director of the CFU and an economist working with the ZFU.

²⁹ Zimbabwe Parliamentary Debates Vol. 18, No. 61, cols. 4414-5.

³⁰ In fact the points system of selecting farmers was introduced by the Rhodesians in the 1960s (Weinrich quoted in Burrows and Roth 1990:284-5).

³¹ Personal communication with the Chief Resettlement Officer in DERUDE on the 21st of February, 1994.

the selection criteria are strongly weighted in favour of those with a potential to accumulate. On the basis of need alone, an applicant would score a maximum of 10 points, while on the basis of suitability, she would score a maximum of 40 points. An applicant who scores below 25 points fails to qualify, while one who scores above 25 points qualifies for resettlement.³²

The settler selection criteria reflects an attempt by the state to sponsor the formation of a class of black petty bourgeois farmers in the resettlement areas. The beneficiaries are those who have benefited from the extension of output and credit markets as well as extension services to peasants during the first decade of independence. While they have responded to incentives, their capacity to accumulate has been constrained by the limited availability of good quality land in the communal areas. The state is building on the inchoate class formation which was promoted by state policies during the first decade of independence.

The government's new resettlement programme is being complemented by private initiatives of the white and black agrarian bourgeoisie. The CFU has proposed the establishment of pilot resettlement schemes in the country's eight provinces.³³ The ZFU is also involved in the proposed schemes. According to the Minister of Lands, Agriculture and Water Development, the proposals demonstrate the CFU's goodwill to the state's resettlement programme. The proposals suggest that the government should vest ownership of the new scheme in a trust, with freehold tenure eventually being granted to the settlers. The trustees would include provincial governors, the CFU, ZFU and the chief Agritex officer who would administer the scheme. The settler selection criteria would include education, previous farming experience and capital of Z\$5 000. The proposed programme provides an example of class struggles by the agrarian bourgeoisie to focus the land redistribution programme in a particular direction which is not inimical to their interests. Their strategy is intended to demonstrate the viability of resettlement based on the capacity to accumulate and, in the process, undermine any lingering support for resettlement based on need. The CFU's support reflects a new non-

³² Personal communication with Chief Resettlement Officer.

³³ See the Herald of 18 July 1994.

confrontational strategy which focuses on working with the government in order to mitigate what it considers to be the harmful aspects of the Act.³⁴

Finally, the commission of land experts to look into the current tenure systems and to come up with recommendations on alternative tenure systems which was recommended in the NLP was appointed on the 1st of November, 1993 and was initially given six months within which to carry out its mandate. The period was extended by another six months to the end of October 1994. The Commission submitted its report at the end of October 1994. The Report is yet to be made public. A controversial feature of the Commission was its gender composition. Out of a membership of twelve, there was only one woman. Attempts by women's organisations to have additional women appointed came to naught. In keeping with the ideology of neo-traditionalism, there were four traditional chiefs on the Commission.³⁵

Conclusion.

This chapter has shown that by the end of the first decade of independence, national and international developments culminated in the adoption of the SAP which has shaped the direction of agrarian reform in the 1990s. While the SAP promotes market-based agrarian reforms and export-dependent accumulation strategies, it has also given vent to black bourgeois and petty bourgeois economic nationalism which advocates the use of the state to create favourable conditions for accumulation. The SAP has given legitimacy to black accumulation which was ostensibly frowned upon during the period of socialist rhetoric.

The above conjunctural factors have shaped the implementation of the constitutional amendment and the new land acquisition law which give the state enhanced powers for the compulsory acquisition of land. The land acquired is to be redistributed to those who have a capacity to accumulate and therefore are capable of contributing to export-led growth which is advocated by the SAP. Land redistribution on the basis of historic deprivation and need has

³⁴ In a personal communication the Director of the CFU said they had accepted the Act as the law of the land which they had to live with.

³⁵ In a television interview in early 1994, the Chairman of the Commission, Professor Rukuni of the University of Zimbabwe, argued that its gender composition would not have adverse implications for women's concerns.

been marginalised and only features in political speeches intended to garner votes. The new constitutional and legal framework which enhances the government's powers to acquire land compulsorily is not being used for the benefit of the landless and poor peasantry. Rather, it is being used for the benefit of the ruling class and its allies. The conditions of accumulation are still based on a strategy of exploitation which is predicated on the maintenance of the nexus between wage-labour and land. Migrant labour and the poor peasantry, especially women, continue to bear the burdens of the accumulation process.

CONCLUSION.

PAST, PRESENT AND FUTURE.

The introduction to this thesis posed two questions: (a) How and in what respects has the agrarian structure changed since independence? (b) What accounts for the nature of the changes? The thesis has attempted to answer the two questions. This conclusion pulls together the answers to the questions. Chapter 1 argues that the two questions can best be answered by analysing the manner in which state power, mediated through law, has been exercised in the re-organisation, regulation and reproduction of social relations which constitute the agrarian question. It argues that the exercise of state power has been shaped by the character of the forces that inherited power at independence, the national and international forces confronting those who control state power, and the ideology of nationalism which mobilised opposition to colonialism and structured and informed state policy.

Chapter 2 argues that it is necessary to appreciate the origins of the agrarian question in order to understand how and why it has changed. The origins of the agrarian question are to be found in the colonisation of Zimbabwe and the consequent subjugation of Africans, the expropriation of their land, and the development of a colonial economy which depended on the production of goods on the basis of cheap labour and the export of agricultural and mineral raw materials. The expropriation of land was one of the strategies that the settlers adopted to force Africans into wage labour. In addition, the expropriation of land was a precondition for the establishment of settler agriculture.

There was a link between low wage labour and the agrarian question. Labour was paid low wages because workers retained access to land on the basis of a supposedly customary tenure. Continued access to land ensured that some of the needs of the worker's family were met from peasant agriculture. Hence the low wages. Low wage labour was also linked with the export-dependency of the colonial economy. Workers earning low wages were not intended to, and could not, provide an internal market for commodities produced by the economy. When secondary industry developed in the post-World War II era, there were attempts to create an internal market through, *inter alia*, land reform. The attempts spawned settler opposition and culminated in the unilateral declaration of independence. As a result of

UN imposed economic sanctions that followed the unilateral declaration of independence, settler agriculture and secondary industry developed interlinkages and provided each other with markets. Thus, the origins and development of the agrarian question are intimately linked with the creation of conditions for capitalist profit in general, and capitalist profit in agriculture in particular.

Chapter 2 also argues that the organisation, regulation and reproduction of colonial relations of production, of which the agrarian question was an element, was undertaken by the colonial state and mediated, *inter alia*, through its legal order. Violence and repression were the organising principles of the colonial state and of its legal order and were justified by an appeal to imperialist ideologies of civilising the natives. With respect to the agrarian question, the expropriation of land and its consequent skewed racial distribution was predicated on the ideology that Africans were low on the scale of social progress and, therefore, that private property rights were foreign to them. Most of the land held by Africans at the time of colonisation could thus be expropriated and private property rights granted to settlers, while the marginal land that remained in their hands was held under an invented customary law which, as argued, established a link between wage labour and peasant agriculture.

In addition, Chapter 2 argues that the invented customary law permitted colonial state functionaries to intervene in the peasant production process for purposes of implementing ecological and economic policies which were designed to increase peasant productivity while at the same time conserving resources. The expropriation of land destroyed the basis of peasant agriculture while the overcrowding, which was a consequence of land expropriation, invariably led to land degradation. Rather than acknowledging that low productivity and land degradation were results of the process of colonial land expropriation, the settlers attributed them to traditional methods of farming. Agrarian policies were thus intended to modernise the traditional methods of farming through the inculcation of good land husbandry. Let it be said though that productivity was only promoted to the extent that it did not encourage competition between peasant producers and capitalist farmers, for to allow competition would have undermined conditions for the profitability of settler agriculture. Modernisation programmes included conservation projects, attempts to introduce a modified form of

individual tenure, and compulsory marketing of designated crops. Hence customary tenure was a colonial ideology of legitimisation. While pretending to respect pre-colonial African landholding practices, the colonial state enacted and implemented laws which gave administrators wide discretionary powers for purposes of controlling the manner in which Africans used land. In other words, the colonial state pretended to respect customary tenure on one hand, while implementing policies which interfered with the manner in which Africans held land.

Africans resisted the expropriation of land, forced labour, and the modernisation strategies. Since the programmes were undertaken by the colonial state and were mediated through its legal order, African resistance was therefore focused on the state and its legal order. Resistance brought together a broad coalition of interests which were united by their opposition to colonial domination. The peasantry joined the struggle against colonialism because of their grievances over the inequitable distribution of land on the basis of race and their opposition to repressive modernisation programmes. The struggles culminated in a war of liberation and ultimately, decolonisation. This research has been concerned with how and why post-colonial agrarian reform has turned out to be what it is, that is, how and why it has not led to a transformation of the agrarian structure.

As to how agrarian reform has been undertaken, this research has shown that the state has acquired close to 3 million hectares of land from white farmers through contractual methods for redistribution to the peasantry. The centre-piece of the land redistribution programme has been the resettlement programme which has been based on models A, B, C and D. In all the models the state has retained ownership of the land and, in the main, has issued the resettled peasantry with permits which impose a battery of conditions that have to be complied with. While land redistribution was initially targeted at poor and landless peasants, the new target is those peasants who have shown a capacity to produce marketed surpluses. In the communal areas the inherited customary tenure has been retained while the authority to allocate land has been taken away from so-called traditional institutions and now vests in elected local government institutions. Finally, the package of support services which was designed for settler farmers during the colonial era has been extended to the peasantry.

As to the what accounts for the nature of changes to the agrarian structure, the thesis has shown that post-colonial agrarian reform has been shaped by a combination of factors, some located in the decolonisation process, others in the national and international forces confronting the post-colonial state, and others in the political and ideological orientations of the forces that inherited state power at independence.

The main argument of the thesis can be divided into two parts. The first is that reforms regarding the land question, that is the ownership of land by a minority of the population and attempts to acquire it for redistribution, have been determined by the decolonisation process and the nature of the changes in power relations that it brought about, and the development strategy adopted by the post-colonial state. The second is that reforms regarding the peasant question, that is the relationship between the state and the peasantry, have been determined by the ideology of nationalism.

Chapters 3 and 4 argue that the nature of the decolonisation process and the nature of the consequent changes in power relations shaped the land acquisition programme. In particular, the constitutional provisions protecting private property from compulsory acquisition constrained land reform. The provision, which was included in the Declaration of Rights at the insistence of the British government, effectively froze colonial property and production relations and protected settler and imperialist interests. As a result of the provision, the exercise of state power *vis-a-vis* land acquisition was constrained. In addition to the constitutional constraints, land reform was constrained by geo-political considerations, specifically, the hostile attitude of the then apartheid regime in South Africa.

More important, however, the scale of land reform has been determined by Zimbabwe's development strategy. During the colonial era, land distribution patterns were integral to the low wage and export-dependent development strategy. Those who inherited state power at independence did not wish to tamper with the development strategy. Rather, they sought to promote economic growth and to distribute the proceeds thereof in a more equitable manner. In other words, they have seen reform in terms of redistributive welfare programmes rather than the transformation of relations of production. In the circumstances, colonial patterns of land distribution and the concentration of support services on the big capitalist farmers have

remained an integral part of the agrarian structure. Large farms are associated with economies of scale and, therefore, efficiency and productivity. If a weighting were to be placed on the different constraints on land reform, the decision to stick with the inherited development strategy and, by implication the underlying land distribution patterns, would certainly carry more weight than the constitutional and geo-political constraints. In fact, the constitutional and geo-political constraints have since disappeared and no significant changes in land reform have taken place. The letter and spirit of the constitutional amendment and the new land acquisition statute which enhance the power of the state to acquire land for redistribution are yet to be realised.

Chapters 5 and 6 analyse the peasant question. Chapter 5 argues that land has been redistributed via a permit system of tenure because of the desire by the ruling class to control peasant land use patterns in order to increase productivity and ensure that resources are properly conserved. In other words, land redistribution is predicated on ideas of modernising peasant agriculture. Post-colonial modernisation programmes are very much reminiscent of colonial ones and are informed by the same ideology. According to the modernist ideology, peasants are traditional and subsistence-oriented. Hence left to themselves, they would employ traditional methods of farming which are not only less productive than those in the large scale capitalist sector, but would also result in land degradation. The solution is to modernise peasant land use methods through strict state regulation which is based on the permit system of tenure. Colonial laws which vest discretionary and permissive powers in the hands of administration have been employed to facilitate modernisation. So important is modernisation that the resettled farmers had to be denied local government representation. And because of the neo-traditional ideology of those who control state power, land redistribution has reproduced household patriarchal relations of production.

Chapter 6 argues that customary tenure has been retained in the communal areas because of the neo-traditional ideology which purports to respect African traditions. The customary tenure which has been respected was invented by the colonial state. Given the upheavals and removals of peasants occasioned by large scale expropriation of land on the one hand, and the implementation of colonial land use policies on the other, the manner in which

peasants held land at independence was certainly different from what it was at the dawn of colonisation. The traditions that are respected are certainly a colonial construct. Like colonial rulers before them, those who control state power have used the ostensible respect for African traditions for purposes of legitimation. There are other similarities. The apparent respect for customary tenure masks attempts to modernise peasant land use practices through technocratic methods. Modernist ideas and practices are predicated on a perception of the peasantry as traditional and therefore subsistence-oriented and incapable of taking good care of a scarce national resource. Land redistribution and land use have thus been separated. In the absence of large scale land redistribution, the focus is on the reorganisation of land use in the communal areas. Given the neo-traditional ideology, patriarchal land tenure practices have been reproduced and reinforced.

Chapter 7 argues that another attempt at modernising peasant agriculture has been through the provision of marketing, extension, input, and credit facilities which were developed for settler farmers by the colonial state. Before the advent of SAP peasants were locked into state marketing and credit institutions. Contrary to the underlying assumptions of modernisation programmes through technocratic methods, the underlying assumption of these modernisation attempts is that the peasantry are rational producers who respond to economic incentives. These modernisation programmes have been pursued separately from land redistribution. Without land redistribution, the programmes have promoted productivity among the small percentage of peasants with access to means of production. The majority have been unable to take advantage of them. Hence the programmes have accelerated and accentuated social and spatial differentiation.

Chapter 8 argues that the adoption of SAP in the 1990s has added to the constraints and contradictions of the 1990s. SAP emphasises export-dependent development strategies and market-based reforms. In the circumstances, the enhanced legal powers of the state regarding land acquisition have not been fully exploited. Land redistribution in the 1990s focuses on a class of rich peasants who have shown a capacity to produce marketable surpluses. In addition, the ruling class is using the state to create a class of black capitalist farmers.

The thesis has not offered suggestions about alternative agrarian policies because this is a question that it does not address. Agrarian reform is always context-specific and therefore cannot be discussed in the abstract. A discussion of alternative policies runs the danger of being a hypothetical exercise involving a lot of speculation about the different permutations in power matrices that would make the alternatives possible.

However, a relevant question which needs to be addressed is whether different policies could have been implemented given the change in power relations that occurred at independence? In other words, could anything different have been done? At a very general level, agrarian reform could have been conceived of as an element of a comprehensive programme to transform the export-dependent accumulation strategy. Land reform would have been an integral element of the alternative strategy. Undoubtedly, the constitutional constraints would have posed a problem. Notwithstanding the constitutional constraints, limited policies such as a land tax could have been implemented during the first decade of independence. Such reforms would have made it uneconomic to hold on to under-utilised or unutilised land and would have forced landowners to sell the land. A ceiling could have been placed on the number of farms and the amount of land that an individual could own. While it is unlikely that such reforms would have transformed the agrarian structure, they would at least have made more land available for redistribution.

Land could have been redistributed in a more democratic manner than under the current resettlement schemes. Resettled farmers could have been given a more secure land tenure system instead of the permit system. Settler participation in the running of the schemes could have been encouraged. In the communal areas, a consultative process could have been initiated in order to design a more democratic and secure system of tenure.

None of the above policies have been implemented. As a result, Zimbabwe still relies on an export-dependent accumulation strategy. Unemployment and the lack of an internal market remain some of the major problems facing the nation. Non-egalitarian land-ownership patterns and different tenure systems are still a feature of the agrarian structure. The peasant question remains a national issue. The thesis has avoided speculating about possible future reforms because to do so would be tantamount to engaging in prophecy. The manner in which

future agrarian reform will develop will be shaped by the configuration of power relations in society, which in turn will be shaped by social struggles. This is beyond speculation.

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